TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 1123.

THE CITY OF SHREVEPORT, LOUISIANA, PLAINTIFF IN ERROR,

vs.

E. H. CARTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 7, 1897.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1123.

THE CITY OF SHREVEPORT, LOUISIANA, PLAINTIFF IN ERROR,

vs.

E. H. CARTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition in No. 108	1	1
Petition for removal in No. 108	5	3
Petition in No. 111	9	4
Petition for removal in No. 111	13	6
Petition in No. 116	17	8
Petition for removal in No. 116	22	10
Plea of prescription	25	12
Answer	25	12
Judgment	27	13
Statement of facts	29	14
Petition for writ of error	37	18
Bond (copy)	38	18
Citation (copy)	40	19
Writ of error (copy)	41	20
Agreement of counsel	43	21
Bond (original)	45	22
Citation (original)	49	23
Opinion	51	23
Minutes of court	71	31
Additional agreement of counsel	75	33
Certificate to record	76	33
Writ of error (original)	79	34

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 10, 1887.

1 *Petition.*

To the honorable the judges of the first judicial district of the State of Louisiana, holding sessions in and for the parish of Caddo:

The petition of Everett H. Carter, a resident of Fort Worth, Texas, and a citizen of the State of Texas, with respect represents that the city of Shreveport, a municipal corporation created by the State of Louisiana, situated in the parish of Caddo, in said State, and a citizen of said State of Louisiana, is justly indebted to him in the sum of three thousand dollars, with eight per cent. per annum interest thereon from the 1st day of October, A. D. 1869, until paid, for this, viz:

On the 3rd day of June, A. D. 1869, the said city, in order to raise means for making improvements upon its streets, wharves, etc., through its council enacted an ordinance providing for the issuance of two hundred bonds of said city, each for the sum of one thousand dollars, bearing interest at the rate of eight per cent. per annum, payable to bearer ten years after date, and also providing for levying and collecting annually a tax sufficient to pay the interest on said bonds, and also for a sinking fund out of which to pay said bonds as they matured; all of which will be seen by reference to an authentic copy of said ordinance, hereto annexed as part hereof, marked "A."

Petitioner avers that thereupon said bonds were engraved, prepared, and signed by officers of said city in accordance with the requirements of said ordinance.

2 Petitioner avers further that subsequently and by various ordinances of its council said city provided for the improvement of its streets, avenues, wharves, etc., and particularly for the improvement of Commerce, Milam, Crockett, and Texas streets, Texas avenue, and of the wharf of said city, and entered into contracts with divers persons—among others, M. Baer, William Robson, D. J. Elder, the Shreveport City Railroad Company, and with various other citizens and property-holders of said city—to have said improvements made at a stipulated price; all of which is shown by authentic copies of said ordinances and contracts, hereto annexed as part hereof.

Petitioner avers the improvements and work so contracted for were made and was done by said contractors, were accepted by said city, enured greatly to its benefit, and were well worth the amount which the city had bound itself to pay therefor.

Petitioner avers further that the said city, in evidence of its indebtedness for the said work and improvements so as aforesaid done and made, issued and gave to the said M. Baer, Wm. Robson, D. J. Elder, the Shreveport City Railroad Company, and other citizens a number of said bonds so as aforesaid authorized by said ordinance of June 3, 1869, and among others, bond- Nos. 90, 44, 43, which are hereto annexed and made part hereof.

Petitioner avers that said bonds originally issued to the Shreveport R. R. Co. was by said company transferred and assigned

for a valuable consideration before maturity and in due
3 course of commercial transactions; that for several years said city paid to any holder of said bond the interest due thereon, and by many ordinances repeatedly recognized its indebtedness as herein set forth, and that he, your petitioner, acquired said bond for a valuable consideration and is now holder and owner of same.

Petitioner alleges that all the ordinances and contracts of the city hereinbefore referred to were legally and properly enacted and entered into after full compliance with all the requirements of law.

He avers further that the obligation of said city to pay its indebtedness as hereinbefore set forth was confirmed and fixed by the charters of said city granted by the State of Louisiana A. D. 1871 and A. D. 1878.

Petitioner alleges amicable demand in vain, and that the city has failed and refused to pay its indebtedness evidenced by said bond and remains indebted for the work done by said company as hereinbefore set forth, and that he (petitioner) is subrogated to all rights and actions of said company against said city.

Petitioner alleges further that the laws of the State of Louisiana, so far as same had any bearing on or relation to the contracts hereinbefore set up and to the rights and obligations therefrom resulting, were, by implication and operation of law, a part of said
4 contracts, and there was an implied contract between said city and the contractors that in event of a failure on the part of the city to comply with the terms of said contract the obligations thereof might be judicially enforced through the means and by the remedies then existing.

Petitioner avers that the law of Louisiana at the date of said contract provided sufficient means and adequate remedy for the enforcement of all rights thereunder arising, but petitioner alleges that article 209 of the constitution of Louisiana, adopted July 23, A. D. 1879, has impaired the obligation of said contracts by destroying all remedies for the enforcement of same, in this, viz., by limiting municipal taxation throughout said State for all purposes whatever to ten mills on the dollar of valuation.

Petitioner avers it is claimed by said city that the entire revenues of the city under the operation of said constitutional limitation are not more than sufficient for its alimony, and petitioner avers that in consequence of such limitation no means exist under the law of Louisiana by which said city can raise funds wherewith to pay or be compelled to pay its just debts.

Petitioner alleges said article 209, so far as it limits municipal taxation, is, as to him, null and void, because it violates the Constitution of the United States, which prohibits all States from passing any law impairing the obligation of contracts.

Petitioner avers that he is entitled to have said article 209
5 declared null and void, so that he may have a remedy by means of which to compel said city to pay its indebtedness to him.

The premises considered, he prays that the city of Shreveport be

cited to answer hereto; that, after all legal notices and delays, he have judgment against said city declaring said article 209 of the constitution of Louisiana — violation of the Constitution of the United States, null and void, and condemning said city to pay him the sum and interest herein claimed, with costs.

He prays for all orders and decrees necessary in the — and for general relief in the premises.

(Sig.) A. H. LEONARD, *Att'y.*

Petition for Removal.

THE STATE OF LOUISIANA, *Parish of Caddo:*

In the First Judicial District Court.

E. H. CARTER *vs.* THE CITY OF SHREVEPORT.

To the hon. judge of said court:

Your petitioner, Everett H. Carter, respectfully shows that he is the plaintiff in the above-entitled suit; that same was commenced by him on or about the 3rd day of July, A. D. 1886, in said court, and that he was at the time of bringing same and still is a citizen of the State of Texas and a resident thereof.

Petitioner shows that there is and was at the time said suit was brought a controversy therein between him and said defendant, then and now a citizen of the State of Louisiana and resident thereof, and that the matter in dispute in their suit exceeds
6 the sum of five hundred dollars, exclusive of costs.

That he has reason to believe and does believe that from local influence or prejudice he will not be able to secure justice by reason of such local influence or prejudice.

That the said controversy raises a Federal question, the determination of which depends upon the construction of the Constitution of the United States.

That said cause can be fully and finally determined in the United States circuit court for the western district of Louisiana.

Your petitioner further represents that the suit has not been tried, but is pending in the said district court of said State of Louisiana, and that this petition is presented and filed in said court at the term at which said cause could be first tried and before the trial thereof.

Your petitioner further shows that he has filed the affidavit required by the statute in such cases, and offers herewith his bond, with Leon M. Carter, of Shreveport, La., as surety thereon, in the penal sum of two hundred and fifty dollars, conditioned as by said acts of Congress required.

Your petitioner prays that said bond be accepted as good and sufficient, and that the said suit may be removed into the next circuit court of the United States in and for the said western
7 & 8 district of Louisiana, pursuant to the acts of Congress in such cases made and provided, and that no further proceedings

may be had therein in this court; and your petitioner will ever pray, etc.

(Sig.) A. H. LEONARD,
Attorney for Petitioner.

Oath of Attorney.

UNITED STATES OF AMERICA,
The State of Louisiana, First Jud'l District of Louisiana:

E. H. CARTER *vs.* THE CITY OF SHREVEPORT.

I, A. H. Leonard, being sworn, depose — say that I am the attorney-at-law for E. H. Carter, plaintiff in said cause, now pending in the 1st judicial district court, parish of Caddo, State of Louisiana; that said plaintiff is now absent from the State of Louisiana; that the contents of the above petition are true, and that I have reason to believe and do believe that from prejudice and local influence the said plaintiff will not be able to obtain justice in said State court.

(Sig.) A. H. LEONARD.

Subscribed and sworn to before me this 14 day of July, A. D. 1886.

(Sig.) W. P. FORD, *Clk.*

(Endorsement:) No. 108. U. S. circuit court. E. H. Carter *vs.* The City of Shreveport. Filed July 14th, 1886. E. J. Nolan, d'y cl'k.

9 *Petition.*

To the honorable the judges of the first judicial district of the State of Louisiana, holding sessions in and for the parish of Caddo:

The petition of Everett H. Carter, a resident of Fort Worth, Texas, and a citizen of the State of Texas, with respect represents that the city of Shreveport, a municipal corporation created by the State of Louisiana, situated in the parish of Caddo, in said State, and a citizen of said State of Louisiana, is justly indebted to him in the sum of four thousand dollars, with eight per cent. per annum interest thereon from the 1st day of October, A. D. 1869, until paid, for this, viz:

On the 3rd day of June, A. D. 1869, the said city, in order to raise means for making improvements upon its streets, wharves, etc., through its council enacted an ordinance providing for the issuance of two hundred bonds of said city, each for the sum of one thousand dollars, bearing interest at the rate of eight per cent. per annum, payable to bearer ten years after date, and also providing for levying and collecting annually a tax sufficient to pay the interest on said bonds, and also for a sinking fund out of which to pay said bonds as they matured; all of which will be seen by reference to an authentic copy of said ordinance, hereto annexed as part hereof, marked "A."

Petitioner avers that thereupon said bonds were engraved, prepared, and signed by officers of said city, in accordance with the requirements of said ordinance.

10 Petitioner avers further that subsequently and by various ordinances of its council said city provided for the improvement of its streets, avenues, wharves, etc., and, among other improvements, for the purchase of a city park; all of which is shown by authentic copies of said ordinances, hereto annexed.

Petitioner alleges that on the 30th day of May, A. D. 1870, the said city purchased from the succession of Samuel Bennett, deceased, ten-acre lot number seven, situated within the corporate limits of said city, for the sum & price of twelve thousand dollars, in which amount said city became indebted to said succession, and in evidence thereof gave to the legal representatives of said succession twelve of the bonds so as aforesaid issued, numbered from 1 to 12, inclusive; that said bonds were by party to whom same were originally issued, transferred, & assigned before maturity for a valuable consideration and in due course of commercial transactions; that for several years said city paid to any holder of said bonds the interest due thereon, and by many ordinances repeatedly recognized its indebtedness as hereinbefore set forth, and that he, your petitioner, acquired bonds Nos. 2, 4, 5, & 11, which are hereto annexed, for a valuable consideration, and is now holder & owner of same.

Petitioner alleges that said city purchased said property in order that same might be used as a city park, and that to secure

11 payment of the amount so as aforesaid due to him by said city he has the vendor's lien & privilege on the property so as aforesaid sold to the city by said succession.

Petitioner alleges further that said city is indebted to him in the further sum of three hundred & seventy dollars, with legal interest from judicial demand, for this, viz., that in event of suit to enforce payment of the said bonds the city contracted and bound itself to pay five per cent. on the amount sued for for attorneys' fees; all of which is shown by an authentic copy of act of sale from the succession of Samuel Bennett to the city of Shreveport, hereto annexed as part hereof.

Petitioner alleges that all the ordinances and contracts of the city hereinbefore referred to were legally and properly enacted and entered into after full compliance with all the requirements of law.

He avers further that the obligation of said city to pay its indebtedness, as hereinbefore set forth, was confirmed and fixed by the charters of said city, granted by the State of Louisiana A. D. 1871 and A. D. 1878.

Petitioner alleges amicable demand in vain, and that the city has failed and refused to pay its indebtedness evidenced by said bond, and remains indebted for said ten-acre lot, as hereinbefore set forth, *as hereinbefore set forth*, and that he (petitioner) is subrogated to all the rights and actions of said succession of Samuel Bennett against said city.

Petitioner alleges further that the laws of the State of Lou-

12 isiana, so far as same had any bearing on or relation to the

contracts hereinbefore set up and to the rights and obligations therefrom resulting, were by implication and operation of law a part of said contracts, and there was an implied contract between said city and the vendor of said property that in the event of a failure on the part of the city to comply with the terms of said contract the obligations thereof might be judicially enforced through the means and by the remedies then existing.

Petitioner avers that the law of Louisiana at the date of said contract provided sufficient means and adequate remedy for the enforcement of all rights thereunder arising, but petitioner alleges that article 209 of the constitution of Louisiana, adopted July 23, A. D. 1879, has impaired the obligations of said contracts by destroying all remedy for the enforcement of same, in this, viz., by limiting municipal taxation throughout said State for all purposes whatever to ten mills on the dollar of valuation.

Petitioner avers it is claimed by said city that the entire revenues of the city under the operation of said constitutional limitation are not more than sufficient for its alimony, and petitioner avers that in consequence of such limitation no means exist under the law of Louisiana by which said city can raise funds wherewith to pay or be compelled to pay its just debts.

13 Petitioner alleges said article 209, so far as it limits municipal taxation, is, as to him, null and void, because it violates the Constitution of the United States, which prohibits all States from passing any law impairing the obligation of contracts.

Petitioner avers he is entitled to have said article 209 declared null and void, so that he may have a remedy by means of which to compel said city to pay its indebtedness to him.

The premises considered, he prays that the city of Shreveport be cited to answer hereto; that, after all legal notices and delays, he have judgment against said city declaring said article 209 of the constitution of Louisiana — violation of the Constitution of the United States, null and void, and condemning said city to pay him the sum and interest herein claimed, with costs.

Recognizing his vendor's lien and privilege, as herein claimed, and directing enforcement of same, he prays for all orders and decrees necessary & for general relief in the premises.

(Sig.) A. H. LEONARD, *Att'y.*

Petition for Removal.

THE STATE OF LOUISIANA, *Parish of Caddo:*

In the First Judicial District Court.

E. H. CARTER *vs.* THE CITY OF SHREVEPORT.

To the hon. judge of said court:

Your petitioner, Everett H. Carter, respectfully shows that he is the plaintiff in the above-entitled suit; that same was commenced

by him on or about the 5th day of July, A. D. 1886, in said
14 court, and that he was at the time of bringing the same and still is a citizen of the State of Texas and a resident thereof.

Petitioner shows that there is, and was at the time said suit was brought, a controversy therein between him and said defendant, then and now a citizen of the State of Louisiana and resident thereof, and that the matter in dispute in their suit exceeds the sum of five hundred dollars exclusive of costs.

That he has reason to believe and does believe that from local influence or prejudice he will not be able to secure justice by reason of such local influence or prejudice.

That the said controversy raises a Federal question, the determination of which depends upon the construction of the Constitution of the United States.

That said cause can be fully and finally determined in the United States circuit court for the western district of Louisiana.

Your petitioner further represents that the suit has not been tried, but is pending in the said district court of said State of Louisiana, and that this petition is presented and filed in said court at the term at which said cause could be first tried and before the trial thereof.

Your petitioner further shows that he desires to remove said suit into the circuit court of the United States for the western district of Louisiana in pursuance of the acts of Congress in that behalf provided.

15 Your petitioner further shows that he has filed the affidavit required by the statute in such cases, and offers herewith his bond, with Leon M. Carter, of Shreveport, La., as surety thereon, in the penal sum of two hundred and fifty dollars, conditioned as by said acts of Congress required.

Your petitioner prays that said bond be accepted as good and sufficient, and that the said suit may be removed into the next circuit court of the United States in and for the said western district of Louisiana pursuant to the acts of Congress in such cases made and provided, and that no further proceedings may be had therein in this court; and your petitioner will ever pray, etc.

(Sig.) A. H. LEONARD,
Attorney for Petitioner.

Oath of Attorney.

UNITED STATES OF AMERICA,
The State of Louisiana, First Jud'l District of Louisiana:

E. H. CARTER *vs.* THE CITY OF SHREVEPORT.

I, A. H. Leonard, being sworn, depose — say that I am the attorney-at-law for E. H. Carter, plaintiff in said cause, now pending in the 1st judicial district court, parish of Caddo, State of Louisiana; that said plaintiff is now absent from the State of Louisiana; that the contents of the above petition in said suit are true, & that I have reason to believe and do believe that from prejudice and

local influence the said plaintiff will not be able to obtain justice in said State court.

(Sig.) A. H. LEONARD.

Subscribed and sworn to before me this — day of July, A. D. 1886.

—— ——.

16 (Endorsement:) No. 111. U. S. C. C. Everett H. Carter *vs.* The City of Shreveport. Filed July 14th, 1886. E. J. Nolan, d'y cl'k.

17 *Petition.*

To the honorable the judges of the 1st judicial district of the State of Louisiana, holding sessions in and for the parish of Caddo:

The petition of Everett H. Carter, a resident of Forth Worth, Texas, and a citizen of the State of Texas, with respect represents that the city of Shreveport, a municipal corporation created by the State of Louisiana, situated in the parish of Caddo, in said State, and a citizen of said State of Louisiana, is justly indebted to him in the sum of twenty-one thousand dollars, with eight per cent. per annum interest thereon from the 1st day of October, A. D. 1869, until paid, for this, viz:

On the 3rd day of June, A. D. 1869, the said city in order to raise means for making improvements upon its streets, wharves, etc. through its council enacted an ordinance providing for the issuance of two hundred bonds of said city, each for the sum of one thousand dollars, bearing interest at the rate of eight per cent. per annum, payable to bearer ten years after date, and also providing for levying and collecting annually a tax sufficient to pay the interest on said bonds, and also for a sinking fund out of which to pay said bonds as they matured, all of which will be seen by reference to an authentic copy of said ordinance, hereto annexed as part hereof, marked "A."

Petitioner avers that thereupon said bonds were engraved, prepared, and signed by officers of said city in accordance with the requirements of said ordinance.

18 Petitioner avers further that subsequently and by various ordinances of its council said city provided for the improvement of its streets, avenues, wharves, etc., and particularly for the improvement of Commerce, Milam, Crockett, and Texas streets, Texas avenue, and of the wharf of said city, and entered into contracts with divers persons—among others, M. Baer, William Robson, D. J. Elder, the Shreveport City Railroad Company, and with various other citizens and property-holders of said city—to have said improvements made at a stipulated price; all of which is shown by authentic copies of said ordinances and contracts hereto annexed as part hereof.

Petitioner avers the improvements and work so contracted for were made and was done by said contractors, were accepted by said

city and greatly enured to its benefit, and were well worth the amount which the city had bound itself to pay therefor.

Petitioner avers further that the said city in evidence of its indebtedness for the said work and improvements so as aforesaid done and made issued and gave to the said M. Baer, Wm. Robson, D. J. Elder, the Shreveport City Railroad Company, and other citizens a number of said bonds so as aforesaid authorized by said ordinance of June 3, 1869, and among others, bond- Nos. 41, 64, 71, 85, 86, 87, 94, 101, 29, 70, 39, 63, 61, 102, 58, 82, 84, 26, 31, 60, 7,

hereto annexed and made part hereof.

19 Petitioner avers that said bond originally respectively issued to the Shreveport City R. R. Co., M. Baer & other contractors, & to Mrs. M. Head, & was by said party to whom same originally issued transferred and assigned for a valuable consideration before maturity and in due course of commercial transactions; that for several years said city paid to any holder of said bond the interest due thereon, and by many ordinances repeatedly recognized its indebtedness as herein set forth, and that he, your petitioner, acquired said bond for a valuable consideration, and is now holder and owner of same.

Petitioner alleges that all the ordinances and contracts of the city hereinbefore referred to were legally and properly enacted and entered into after full compliance with all the requirements of law.

He avers further that the obligation of said city to pay its indebtedness, as hereinbefore set forth, was confirmed and fixed by the charters of said city, granted by the State of Louisiana A. D. 1871 and A. D. 1878.

Petitioner alleges amicable demand in vain, and that the city has failed and refused to pay its indebtedness evidenced by said bond and remains indebted for the work done by said contractors & for property sold by Mrs. M. Head, as hereinbefore set forth, and that he (petitioner) is subrogated to all the rights and actions of said contractors & Mrs. Head against said city.

Petitioner alleges further that the laws of the State of

20 Louisiana, so far as same had any bearing on or relation to the contracts hereinbefore set up and to the rights and obligations therefrom resulting, were, by implication and operation of law, a part of said contracts, and there was an implied contract between said city and the contractors that in event of a failure on the part of the city to comply with the terms of said contract the obligations thereof might be judicially enforced through the means and by the remedies then existing.

Petitioner avers that the law of Louisiana at the date of said contract provided sufficient means and adequate remedy for the enforcement of all rights thereunder arising, but petitioner alleges that article 209 of the constitution of Louisiana, adopted July 23, A. D. 1879, has impaired the obligation of said contracts by destroying all remedies for the enforcement of same, in this, viz., by limiting municipal taxation throughout said State for all purposes whatever to ten mills on the dollar of valuation.

Petitioner avers it is claimed by said city that the entire revenues of the city under the operation of said constitutional limitation are not more than sufficient for its alimony; and petitioner avers that, in consequence of such limitation, no means exist under the law of Louisiana by which said city can raise funds wherewith to pay or be compelled to pay its just debts.

Petitioner alleges said article 209, so far as it limits mu-
21 nicipal taxation, is, as to him, null and void, because it violates the Constitution of the United States, which prohibits all States from passing any law impairing the obligation of contracts.

Petitioner avers he is entitled to have said article 209 declared null and void so that he may have a remedy by means of which to compel said city to pay its indebtedness to him. The premises considered, he prays the city of Shreveport be cited to answer hereto; that, after all legal notices and delays, he have judgment against said city declaring said article 209 of the constitution of Louisiana — violation of the Constitution of the United States, null and void, and condemning said city to pay him the sum and interest herein claimed, with costs. He prays for all orders and decrees necessary, and for general relief in the premises. He avers that the bonds so as aforesaid issued to Mrs. M. Head were in consideration of a compromise between her & said city, by which said city acquired certain property, as shown by ordinance hereto annexed, marked "B."

(Sig.) A. H. LEONARD,
" LAUD & LAUD,
Att'ys.

Filed July 30th, 1886.
(Sig.) A. V. WILSON,
Dep'ty Cl'k.

Service accepted; citation & time waived.
July 30, 1886.
(Sig.) ALEXANDER & BLANCHARD,
Att'ys for Def't.

22 *Petition for Removal.*

THE STATE OF LOUISIANA, *Parish of Caddo:*

In the First Judicial District Court.

E. H. CARTER *vs.* THE CITY OF SHREVEPORT.

To the hon. judge of said court:

Your petitioner, E. H. Carter, respectfully shows that he is the plaintiff in the above-entitled suit; that same was commenced by him on or about the 30 day of July, A. D. 1886, in said court, and that he was at the time of bringing the same and still is a citizen of the State of Texas and a resident thereof.

Petitioner shows that there is and was at the time said suit was brought a controversy therein between him and said defendant, then and now a citizen of the State of Louisiana and resident thereof, and that the matter in dispute in their suit exceeds the sum of five hundred dollars, exclusive of costs; that he has reason to believe and

does believe that from local influence or prejudice he will not be able to secure justice by reason of such local influence or prejudice; that the said controversy raises a Federal question, the determination of which depends upon the construction of the Constitution of the United States; that said cause can be fully and finally determined in the United States circuit court for the western district of Louisiana.

23 Your petitioner further represents that the suit has not been tried, but is pending in the said district court of the said State of Louisiana, and that this petition is presented and filed in said court at the term of which said cause could be first tried and before the trial thereof.

Your petitioner further shows that he desires to remove said suit into the circuit court of the United Stattes for the western district of Louisiana in pursuance of the acts of Congress in that behalf provided.

Your petitioner further shows that he has filed the affidavit required by the statute in such cases, and offers herewith his bond, with A. H. Leonard, of ——, as surety thereon, in the penal sum of two hundred and fifty dollars, conditioned as by said acts of Congress required.

Your petitioner prays that said bond be accepted as good and sufficient, and that the said suit may be removed into the next circuit court of the United States in and for the said western district of Louisiana, pursuant to the acts of Congress in such cases made and provided, and that no further proceedings may be had therein in this court.

And your petitioner will ever pray, etc.

(Sig.) A. H. LEONARD,
Attorney for Petitioner.

Oath of Attorney.

UNITED STATES OF AMERICA, *1st Jud'l District of Louisiana:*

E. H. CARTER *vs.* CITY OF SHREVEPORT.

24 I, A. H. Leonard, being sworn, depose — say that I am the attorney-at-law for E. H. Carter, plaintiff in said cause, now pending in the 1st judicial district court, parish of Caddo, State of Louisiana; that said plaintiff is now absent from the State of Louisiana; that the contents of the above petition are true, and that I have reason to believe and do believe that from prejudice and local influence the said plaintiff will not be able to obtain justice in said State court.

(Sig.) A. H. LEONARD.

Subscribed and sworn to before me this 30th day of July, A. D. 1886.

(Sig.) A. V. WILSON, *Dep'ty Cl'k.*

(Endorsement:) 116. E. H. Carter *vs.* City of Shreveport. Petition, &c. Filed July 30th, 1886. (Sig.) J. W. Wheaton, cl'k.

25 *Plea of Prescription.*

In U. S. Circuit Court, 5th Circuit, Western District of La.

E. H. CARTER
vs.
CITY OF SHREVEPORT. } Nos. 108, 111, & 116.

Now comes defendant in above cause and, as a peremptory exception, pleads the prescription of one, three, five, and ten years in bar of plaintiff's action herein.

Wherefore defendant prays that this suit be dismissed at plaintiff's cost.

(Sig.) E. H. RANDOLPH,
" ALEXANDER & BLANCHARD,
Attorneys for Def'd't.

(Endorsement:) Nos. 108, 111, & 116. E. H. Carter *vs.* City of Shreveport. Plea of prescription. Filed July 30th, '86. (Sig.) J. W. Wheaton, cl'k.

Answer.

In U. S. Circuit Court, 5th Circuit, Western Dist. of La.

E. H. CARTER
vs.
CITY OF SHREVEPORT. } Nos. 108 & 111 & 116. Consolidated.

Now comes defendant and, for answer to plaintiff's petition, denies all & singular the allegations therein contained, and specially that the plaintiff is a *bona fide* holder before maturity of the bonds sued on.

26 Further answering, respondent specially denies that the city of Shreveport had any right, power, or authority to issue or put into circulation the bonds sued upon herein, and avers that the same were issued by the trustees or officers of said city without warrant or authority of law or its charter and are absolutely null & void in law and in no manner binding upon said city.

Respondent, for further answer, alleges that even if the city had possessed the power to make or issue the bonds in question, which is denied, the said bonds are still illegal, null & void, and not binding upon said city, for the reason that at the time the said bonds were made & issued and debts contracted no provision was made in the ordinance creating the debt or means provided for the payment of the principal & interest of said bonds or debt so contracted, as required by section 2448 of the Revised Statutes of the State of Louisiana; that the provisions of said statute is prohibitory, and said bonds, having been issued in contravention thereof, are null & void.

Further answering, respondent specially denies there was or is any privity whatsoever existing between plaintiff and the contractors, who are alleged in the petition to have performed

27 certain work under contracts with the city, or that plaintiff has any right of action against respondent for work done or labor

performed by other persons, and to which contracts plaintiff herein was no party; that if any such right of action does exist in plaintiff, which is denied, then the said contracts were also made in violation of said prohibitory law above referred to (sect. 2448), were illegal, void, and in no manner binding upon the city of Shreveport.

Wherefore respondent prays that plaintiff's demand be rejected at his costs.

(Sig.) E. H. RANDOLPH,
" ALEXANDER & BLANCHARD,
Attorneys for Defendant.

(Endorsement:) Nos. 108, 111, & 116. E. H. Carter *vs.* City of Shreveport. Answer. Filed July 30, '86. (Sig.) J. W. Wheaton, cl'k.

Judgment.

U. S. Circuit Court, Western District of Louisiana.

E. H. CARTER *vs.* THE CITY OF SHREVEPORT. } Nos. 108, 111, & 116. Consolidated.

In this case, by reason of the law and the evidence being in favor of the plaintiff & against the defendant, & for reasons given
28 in opinion read herein, it is ordered, adjudged, & decreed that the motion for recusation herein filed, which has been waived by defendant, be overruled, & that the plea of prescription herein filed be also overruled; and it is further ordered, adjudged, & decreed that the plaintiff, E. H. Carter, have and recover of the defendant, The City of Shreveport, the full sum of thirty-three thousand six hundred dollars, with five per cent. *per cent.* per annum interest thereon from Oct'r 1st, A. D. 1877, until paid, and for the further sum of three hundred & seventy dollars, with five per cent. per annum interest thereon from July 5, 1886, and all costs.

It is further ordered, adjudged, & decreed that article 209 of the constitution of Louisiana, adopted A. D. 1879, is, and is hereby decreed to be, unconstitutional, null, & void, so far as same imposes a limit on municipal taxation or in any manner affects the debt due by defendant to plaintiff, which is recognized by this judgment.

Done, read, & signed in open court on this 7th day of March, A. D. 1887.

(Sig.) ALECK BOARMAN, *Judge.*

(Endorsement:) Nos. 108, 111, & 116, consolidated. E. H. Carter *vs.* City of Shreveport. Judgment. Filed M'ch 7th, 1887. (Sig.) J. W. Wheaton, cl'k.

29 *Statement of Facts.*

U. S. Circuit Court, Western District of Louisiana.

E. H. CARTER
vs.
THE CITY OF SHREVEPORT. } Nos. 108, 111, 116. Consolidated.

By written agreement of counsel these three suits were consolidated, jury was waived, and motion for recusation abandoned and dismissed. The defendant offered no evidence.

Statement of facts on plea of prescription.—Prescription as against plaintiff's demand was interrupted by a judicial demand and citation on the 30th August, 1884, and prescription has not accrued.

On the merits.—The defendant is a municipal corporation.

In 1869 and 1870, in pursuance of ordinances legally enacted & promulgated, the defendant caused to be let several contracts for public works, such as grading and otherwise improving the streets and wharves of the city.

By written agreement the contractors undertaking the public works which were provided for in the ordinances were to receive from the defendant for the amounts due them for work and labor done and material furnished a part in cash as the work progressed and the balance in the ten-year coupon one-thousand-dollars bonds of the city at par.

The works having been satisfactorily performed and accepted by the city, a number of such bonds were executed and given to said contractors to evidence the amount due them in accordance
30 with the agreement of the parties. The defendant corporation has had the benefit and enjoyment of the works, and the credit price represented by these bonds has never been paid to any one.

The several contractors to whom the bonds were given transferred them by delivery before maturity for value, and plaintiff acquired twenty-six of said bonds for value and in due course of business.

On the 30th May, 1870, in conformity to ordinances of the city previously and duly enacted, the city purchased ten-acre lot number seven, situated within the corporate limits of said city, for the price of twelve thousand dollars, for which the city executed and gave to the vendors of said property twelve ten-year coupon bonds of the city, each for the sum of one thousand dollars, bearing numbers from 1 to 12, inclusive, which bonds were by the notary, before whom the act of sale was passed, paraphed "*ne var-etur*" to identify them with the act of sale. By said act a special mortgage waiving benefit of appraisement was stipulated on said property in favor of any holder of said bonds to secure the payment of said bonds & the coupons thereto attached, and, in the event of suit on said bonds, the city bound itself to pay all costs and attorneys' fees, fixed at five per cent. on the amount sued for. The act of sale & mortgage was signed on the part of the city by the mayor of the city.

Thereupon the city took possession of said ten-acre lot number
31 seven as owner and has ever since held & now holds possession of same as owner. Said property was purchased by said city for a city park. The bonds so issued to the vendors of said property were by them transferred by delivery before maturity for value, and in due course of business plaintiff acquired four of said bonds & now holds same. Mrs. M. Head was owner and in possession of certain lots situated in what is known as the Batture of Shreveport, holding under a deed executed by the city. On these lots Mrs. Head had buildings and improvements.

This batture, including Mrs. Head's lots, was claimed by the Shreveport Town Company, the original owners of all the territory known as Shreveport, and it was also claimed by the city. A compromise was effected Jan'y 21st, 1871, by which it was agreed that the batture should be laid off into lots, with streets, alleys, &c., & that the lots should be sold at public auction, the proceeds to be divided equally between the city and said Shreveport Town Company. By said compromise it was agreed between the city and said company that Mrs. Head was to have certain other lots and that she should retain possession of her property until the 1st day of May, A. D. 1874, as a consideration for them giving up said lots so held by her & removing therefrom the buildings and improvements thereon and also for her renunciation of her title to said lots. This agreement & compromise was made subject to Mrs. Head's acceptance of its terms, and the compromise was authorized and ratified by
32 an act of the Legislature of Louisiana, approved ——— —, 1871. Immediately after the compromise was so authorized & ratified the city, desiring to have said batture sold at once, as a consideration for the immediate removal of Mrs. Head and to get immediate possession of said lots, in pursuance of ordinances legally enacted and promulgated, gave to Mrs. Head three of the ten-year thousand-dollar bonds of the city. Mrs. Head thereupon gave to the city immediate possession, renounced her title, and removed said buildings, and the batture was shortly afterwards sold and the city received half of the proceeds of the sale. Mrs. Head transferred these bonds before maturity by delivery for value, and plaintiff acquired & holds two of them in due course of business.

Up to and including the year 1877 the city levied annually a tax to provide means for paying the interest and also to provide a sinking fund for the payment of the principal of said bonds hereinbefore mentioned, and the interest was paid to any one holding them.

Up to and including said year 1877 the bonds were also annually placed in the city's statement of its liabilities and in its published budgets, and some of said bonds were taken up by the city.

The defendant corporation issued in the year 1866 bonds for $500.00 each, payable in five, ten, and fifteen years, respectively, and same were placed in the annual statements of the city's liabilities and in its budgets.

33 The following is a copy of the bonds given to said contractors and said vendors & said Mrs. Head and now held by plaintiff:

"$1,000.00. $1,000.00.

"STATE OF LOUISIANA, *City of Shreveport:*

"Municipal loan for improvement & extension of the avenues of trade and other purposes.

"Know all men by these presents that the mayor & trustees of the city of Shreveport acknowledge to owe —— —— or bearer one thousand dollars, lawful money of the United States, which the said mayor & trustees promise to pay, at the controller's office, in the city of Shreveport, on the 1st day of October, A. D. 1879, with interest thereon at eight per cent. per annum, payable semi-annually at the Bank of New York, in the city of New York, on presentation of the coupons hereto attached. For the performance of this obligation the faith and property of the corporation of Shreveport are irrevocably pledged and a tax is ordered to be levied on all the taxable property of said city annually to pay the said interest and to create a sinking fund to pay the principal when the same becomes due. This bond is issued in obedience to an ordinance of the mayor & trustees of said city, adopted on the 3rd day of June, A. D. 1869, for the purpose of raising means to make such improvements as the growth of the city demands.

"In witness whereof this bond is signed by the mayor and controller of said city of Shreveport and approved by the finance committee and the seal of the city affixed the 1st day of October,
34 A. D. 1869.

"(Sig.) J. B. GILMORE, *Mayor.*
"(Sig.) C. H. SPILKER, *Controller.*

"Approved:

THOS. H. MORRIS,
J. C. MONCURE,
J. N. HOWELL,
Finance Committee."

The bond bears following endorsement:

"*Bond of the City of Shreveport.*

"No. —. $1,000.00, payable Oct'r 1st, 1879. Interest at eight per cent. per annum, payable at the Bank of New York, in the city of New York, April & October.

"This bond is one of two hundred of like denomination, and the ordinance under which they are issued provides for their payment as well as the payment of interest, as required by law, by setting apart from the revenues of the city the sum of thirty-six thousand dollars annually to pay said interest punctually and to create a sinking fund to pay the principal. The ordinance providing for the principal and interest is irrevocable until the same is fully paid.

"The ordinance providing for the interest & principal of any debt created by any board of police or authorities of incorporated

towns and cities shall remain in full force until the debt and interest is paid." Acts of the State of Louisiana, session of 1855, sec. 5, page 326.

The series of bonds of which the bonds held by plaintiff are a part were issued under an ordinance of June 3rd, 1869. Sec. 4 of the ordinance is as follows:

35 "Be it further ordained, &c., that, in order to fully provide for the payment of the principal and interest of said bonds as the board is required to do by law, there shall be set apart from the revenues of the city semi-annually the sum of eight thousand dollars to meet the payment of the interest upon said bonds as the same becomes due; and, to meet the payment of the said bonds, there shall be set apart from said revenues the sum of twenty thousand dollars annually as a sinking fund, and, in order to raise the amount of interest as the same becomes due and the amount necessary to create the said sinking fund, it shall be the duty of the mayor & trustees of the city to levy annually upon all taxable property in the city of Shreveport such amount of tax as shall fully provide for the payment of said interset and the creation of said sinking fund, in addition to the payment of the current and ordinary expenses of the city government."

The charter of the city of Shreveport as it existed at the dates hereinbefore stated is found in several acts of the Legislature of Louisiana, viz: Act No. 67, session of 1839, page 200; act No. 190, session of 1850, page 123; act No. 232, session 1853, page 198; act No. 156, session 1859, page 120; act No. 146, session 1866, page 276.

Subsequently to said dates hereinbefore stated and by an act of the Legislature of Louisiana approved Ap'l 27th, 1871, the territory previously known as Shreveport, together with other territory,

36 was designated the city of Shreveport, and the inhabitants constituted a body politic by the name and style of the City of Shreveport and invested with certain rights and privileges, subject to certain duties and obligations, as shown by said act.

The defendant corporation has no property subject to execution, and the revenues of the city, under the limitation on municipal taxation imposed by article 209 of the constitution of Louisiana, adopted A. D. 1879, are not more than sufficient for the alimony of the city.

(Sig.) ALECK BOARMAN, *Judge.*

(Endorsement:) Nos. 108, 111, & 116, consolidated. E. H. Carter *vs.* The City of Shreveport. Statement of facts. Filed March 28, '87. (Sig.) J. W. Wheaton, cl'k.

37 *Petition for Writ of Error.*

UNITED STATES OF AMERICA,
Fifth Circuit, Western Dist. of La.:

To the hon. justices of the Supreme Court of the United States:

And now comes the city of Shreveport, a municipal corporation of the State of Louisiana, by E. H. Randolph and Alexander & Blanchard, its attorneys, and complains that in the records & proceedings and also in the rendition of judgm't in suit between E. H. Carter, plaintiff, and said City of Shreveport, defendant, tried in the circuit court of the United States for said fifth circuit, western district of Louisiana, at the Feb'y term thereof, 1887, and in which judgment was rendered against said city of Shreveport on the 7th day of March, 1887, manifest error hath intervened, to the great damage of the said city of Shreveport.

Wherefore it prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

(Sig.) E. H. RANDOLPH,
" ALEXANDER & BLANCHARD,
Att'ys for City of Shreveport.

Allowed:
(Sig.) ALECK BOARMAN, *Judge.*

(Endorsement:) Nos. 108, 111, & 116, consolidated. E. H.
38 Carter *vs.* City of Shreveport. Petition for writ of error. Filed March 14th, '87. (Sig.) J. W. Wheaton, clerk.

Bond for Writ of Error.

Supreme Court of the United States.

E. H. CARTER
vs.
CITY OF SHREVEPORT. } Nos. 108, 111, & 116 (Cons.)

Know all men by these presents that we, The City of Shreveport' as principal, and E. M. Smith and W. P. Ford, as sureties, are held and firmly bound unto E. H. Carter, of Fort Worth, Texas, in the sum of two hundred & fifty dollars, to be paid to the said E. H. Carter, his *his* executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 14th day of March, 1887.

Whereas the above-named City of Shreveport hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the fifth circuit and western district of Louisiana:

39 Now, therefore, the condition of this obligation is such that if the above-named City — Shreveport shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Sig.) A. CURRIE, [SEAL].
Mayor of the City of Shreveport.
(Sig.) " W. P. FORD. [SEAL.]
E. M. SMITH. [SEAL.]

Sealed and delivered in presence of—
(Sig.) T. ALEXANDER.
" THOMAS J. LEATON.

UNITED STATES OF AMERICA,
Fifth Circuit, Western Dist. of La.:

E. M. Smith & W. P. Ford, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

(Sig.) W. P. FORD.
" E. M. SMITH.

Sworn to and subscribed before me this 14th day of March, 1887.
[SEAL.] (Sig.) J. B. SLATTERY,
U. S. Commissioner.

I approve the above and the sufficiency of the sureties thereto.
(Sig.) ALECK BOARMAN, *Judge.*

(Endorsement:) Nos. 108, 111, & 116, consolidated. E. H.
40 Carter *vs.* City of Shreveport. Bond for writ of error. Filed March 14, '87. (Sig.) J. W. Wheaton, clerk.

Citation.

United States of America to E. H. Carter, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and western district of Louisiana, wherein The City of Shreveport is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this the 14th day of March, A. D. 1887.

(Sig.) ALECK BOARMAN, *Judge.*

Marshal's Return.

41 Rec'd this citation on writ — error in office M'ch 17th, 1887, & on the 18th day of same month & year I served a certified copy of same on A. H. Leonard, attorney for plaintiff (def't in error), by leaving same in his hands in the city of Shreveport, La.

(Sig.) A. C. GIBSON,
U. S. Marshal.

(Endorsement:) The City of Shreveport *vs.* E. H. Carter. Citation. Filed March 14th, '87. (Sig.) J. W. Wheaton, clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judge of the circuit court of the United States for the fifth circuit, western district of Louisiana, Greeting:

Because that in the records & process, and also in the rendering of judgment in a suit before you or some of you, between The City of Shreveport, La., plaintiff in error, and E. H. Carter, a citizen of the State of Texas, defendant, a manifest error has intervened, to the great damage of the said plaintiff in error, as in his complaint stated, and as it is just and proper that the error, if any there be, should
42 be corrected in due manner and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record & process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice & associate justices of the Supreme Court of the United States on the second Monday of October next, at Washington, being present seat of the National Government, that, the record & process aforesaid being inspected, they may cause thereupon to be done what of right ought to be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this the 14th day of March, in the year of our Lord 1887, and of the Independence of the United States the one hundred*th* & eleventh.

[Seal U. S. C. C., West. Dist., La.]

(Sig.) J. W. WHEATON, *Clerk.*

(Endorsement:) 94. Nos. 108, 111, & 116, consolidated. City of Shreveport *vs.* E. H. Carter. Writ of error. Filed March 14, '87. (Sig.) J. W. Wheaton, cl'k.

43 *Agreement of Counsel.*

THE STATE OF LOUISIANA, *Parish of Caddo:*

U. S. Circuit Court, 5th Circuit, Western District La.

Agreement between the plaintiffs in various suits against the city of Shreveport and the said city, pl'ffs being represented herein by A. H. Leonard, their att'y, and defendant by their attorney-, Alexander & Blanchard and E. H. Randolph.

It is understood & agreed that the said Leonard will, on his motion, have the various suits of E. H. Carter *vs.* The City of Shreveport consolidated, so as to be in effect one suit; the various suits of John R. Holmes *vs.* Said City consolidated, so as to be in effect one suit, and the various suits of John B. Crooks *vs.* Said City consolidated, so as to be in effect one suit.

That said Leonard will also take same course with regard to another suit—on eighteen bonds of said city—which will be filed to-morrow in name of E. H. Carter, & which is to be consolidated with the other suits of said Carter against said city.

It is understood & agreed that said defendant will file to-morrow morning answers in said suits and raise thereon no question as to the right of plaintiffs in said suits to sue as owners therein sued on.

It is further understood & agreed that on the issues so made a trial shall be had at the next term of the circuit court of the United States for the fifth circuit & western district of Louisiana by the court, trial by jury in said causes being hereby waived, and

44 that either party may offer in evidence the evidence adduced on the trial of the case of Simon Levy *vs.* The City of Shreveport, No. 28 on the docket of said court, or any portion thereof, and such other evidence as either party may choose to offer, subject *as* to legal objections as to competency & admissibility.

It is further understood & agreed that in the event a writ of error is sued out from the judgment which may be rendered in said causes or any one of them such writ of error shall have the full effect of a supersedeas, provided it is sued out within the time fixed by law for sueing out a writ of error to operate as a supersedeas, on a bond for an amount sufficient to cover costs; and it is further understood & agreed that in the event a writ of error is sued out in said causes or any one of them such cause or causes shall be submitted to the Supreme Court of the United States on briefs to be filed within fifteen days after the commencement of the term to which said cause is or causes are made returnable.

It is further agreed that the case Nathan Simmons *vs.* The City of Shreveport shall not be tried until after final trial of Supreme Court in the event the other cases herein referred to are taken to said Court.

July 29, '86.

(Sig.) A. H. LEONARD, *Att'y for Pl'ffs.*
(Sig.) ALEXANDER & BLANCHARD,
(Sig.) E. H. RANDOLPH,
Att'ys for Defendant.

45 Supreme Court of the United States.

E. H. CARTER
vs.
CITY OF SHREVEPORT. } Nos. 108, 111, & 116 (Cons.).

Know all men by these presents that we, The City of Shreveport, as principal, and E. M. Smith and W. P. Ford, as sureties, are held and firmly bound unto E. H. Carter, of Fort Worth, Texas, in the sum of two hundred & fifty dollars, to be paid to the said E. H. Carter, his *his* executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 14th day of March, 1887.

Whereas the above-named City of Shreveport hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgement rendered in the above-entitled action by the circuit court of the United States for the fifth circuit and western dis-

46 trict of Louisiana.

Now, therefore, the condition of this obligation is such that if the above-named City — Shreveport shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

A. CURRIE, [SEAL.]
Mayor of the City of Shreveport.
W. P. FORD. [SEAL.]
E. M. SMITH. [SEAL.]

Sealed and delivered in presence of—
T. ALEXANDER.
THOMAS J. LEATON.

UNITED STATES OF AMERICA,
Fifth Circuit, Western Dist. of La.

E. M. Smith & W. P. Ford, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

W. P. FORD.
E. M. SMITH.

Sworn to and subscribed before me this 14th day of March, 1887.
[Seal U. S. Commissioner, Western District La.]

J. B. SLATTERY,
U. S. Commissioner.

47 I approve the above and the sufficiency of the sureties thereto.
ALECK BOARMAN, *Judge.*

48 [Endorsed:] No-. 108, 111, & 116, consolidated. E. H. Carter *vs.* City of Shreveport. 12. Bond for writ of error. Filed March 14, '87. J. W. Wheaton, clerk.

49 UNITED STATES OF AMERICA, *ss:*

To E. H. Carter, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein The City of Shreveport is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this the 14th day of March, A. D. 1887.

[Seal U. S. Circuit Court for the Western Dist. of La.]

ALECK BOARMAN, *Judge.*

50 [Endorsed:] No. 123. C. C. The City of Shreveport *vs.* E. H. Carter. 13. Citation. Filed March 14, '87. J. W. Wheaton, clerk.

Rec'd this citation on writ — error, in office, M'ch 17th, 1887, & on the 18th day of same month & year I served a certified copy of same on A. H. Leonard, attorney for plaintiff (def't in error), by leaving same in his hands in the city of Shreveport, La.

A. C. GIBSON,
U. S. Marshal.

51 *Opinion of Judge.*

U. S. Circuit Court, Western District Louisiana.

E. H. CARTER *vs.* CITY OF SHREVEPORT. } No-. 108, 111, 116.

A. H. Leonard, A. D. Laud, for plaintiff; T. Alexander, E. H. Randolph, for defendant.

By agreement, jury waived and the three cases consolidated.

The pleading, issues, and facts in the case are substantially the same as those in the case of Dorian *vs.* The City of Shreveport, 28th Fed. Reporter, 287. The bonds and ordinances relating to their issuance were fully recited in that case. The several statutes vesting powers in the defendant city make up the charter by which we are to test and measure the liability of the corporation for the acts of its agents in entering into the contracts in pursuance of which the bonds held by plaintiff were executed. Dealers in municipal bonds or other such securities and evidences of indebtedness are charged with notice as to the power of the corporation to incur and bind the city for the debt evidenced by such instruments.

Under the agreement made with the several persons to whom these bonds were issued they were to do certain public work in the

way of grading or otherwise improving the streets of the city, and were to be paid half in cash and the balance in the ten-year bonds at par. The work was satisfactorily performed and
52 the indebtedness evidenced by these bonds has never been paid.

The defense is in the nature of a demurrer. The defendant, offering no evidence, relies upon two grounds in law for relief: First, upon the pleas *ultra vires;* second, upon the prohibitory act of 1855, which forbids a municipal corporation to incur a debt without providing in the ordinance creating the debt the means of paying the principal and interest. The law, *ultra vires,* is a shield to the tax-payers of a corporation; when properly administered it should enable them to avoid the payment of a debt, whatever may be the form of the instruments used to evidence the liability, which has been contracted beyond the scope of the corporate powers. The reason and principle of this law lies in the fact that the power to bind the corporation for a debt carries with it the power to pay the debt out of the revenues collected from the tax-payers. No tax should be collected to pay a debt not lawfully binding on the corporation; hence the plea *ultra vires* will be good against the payment of such a liability.

Municipal corporations possess the following powers: First, powers granting in express words and such as are necessarily or fairly implied from the language used in enumerating and vesting the sev-
53 eral express grants; second, such powers as are essential to the declared purposes of the corporation. In the statutes which made up the charter of defendant city at the time these bonds were issued we find powers expressly given of a more extensive kind than usually belong to city governments. Among them we find the power "to erect such public works and buildings for the use and advantage of the town as they may deem expedient;" * * * "to give bonds and receive bonds, which shall be as effectual in law as other bonds given under the laws of the State; to levy an annual tax, not limited in amount, from 1853 until after time these bonds were issued, for the comfort, improvement, and well regulating of the town." The mayor was required to sign all notes and other obligations binding on the corporation. The mayor and trustees "have power from time to time to enact and provide for the promulgation of such by-laws and ordinances, not inconsistent with the laws of the State and United States, as they may deem proper in relation to the public markets of said town, to the landings, streets, alleys, and highways therein, and to the opening, widening, draining, filling up, keeping in order, and improving the same;" * * * "to open, extend, pave, plank, macadamize, or otherwise improve and adorn the streets, alleys, and wharves of the city." In Reynolds *vs.* Shreveport, 13 A., 426, the court held that the city could incur a debt for grading the streets, and in discussing the powers we have mentioned
54 said they were "of the most ample description." In the face of these liberal grants to defendant city it cannot be denied that the agents of the corporation were fully authorized to contract for the

public works performed by the several contractors to whom the bonds were issued. The numerous authorities cited in the Dorian case, some of them from the courts of Louisiana, show abundantly the power of the city's agents to give warrants, vouchers,— other evidences of indebtedness binding on the city to anticipate the current revenues and to evidence the amounts due on a credit, whether it be long or short, in pursuance of contracts for public works made by the city's agents within the scope of their official powers. The defendant, among other cases, cites the case of Wilson *vs.* City of Shreveport. A careful consideration of that case does not appear to avail anything for the defense against the bonds now held by plaintiff.

In that case the bonds were alleged, in themselves, as commercial paper, to be a basis for recovery. Those bonds were issued in 1867. The interest was being paid on them at the time these bonds were issued, and the court decided the suit on them in 1877. In this case the bonds were issued in 1869, and the city provided for and continued to pay the interest on them to any one holding them
55 until 1878. When the bonds came into the hands of plaintiff the Wilson suit had not been filed, and there was nothing known in the history of their origin, issue, or treatment by the city to depreciate them or in any way dishonor them in public confidence or commerce. All the parties to the contract were in good faith, and if the city's agents had no authority to bind the corporation on such instruments for debts lawfully due public creditors neither the city nor the persons who performed public works nor the public knew or suspected the absence of such powers. It is in evidence that the city's agents at the time these bonds came into the hands of plaintiff had been for many years issuing commercial notes or bonds, and that the constituents of the corporation from time to time had been paying the principal and interest of the same. The payment of the annual interest on these bonds to any holder of them, however willingly it may have been paid, could not, if the bonds were given to evidence a debt not lawfully binding on the corporation, operate in law as a ratification of them, nor would the city be forbidden in law to *to* deny or refuse to pay them for that reason. If the debt to evidence which they were executed was not such a debt as would be binding on the corporation, then no obligation on the part of defendant ever existed, and no acts of the city officials in pay-
56 ing them could amount to a ratification by the constituents of the corporation, but if the debt be lawfully due, it seems that the principals laid down by Judge Drummond in case Portsmouth Savings Bank *vs.* Springfield, 4 Fed. Reports, 276, may with force be applied to this case: "All questions of doubt in relation to the validity of these bonds should be answered in favor of their legality, because the city has recognized their validity repeatedly and has paid the interest on them for a series of years. Therefore, under such circumstances as these, it should appear, beyond all —, that the issue of the bonds was void." The opinion in the Wilson case shows that the bonds he sued on were given to evidence the purchase price of gas stock which the city's agents had purchased for the corporation. The plea *ultra vires* was sustained because the

court thought there was no authority in the city's agents to purchase gas stock, and consequently they could not bind the corporation for the debt. If it be true that the corporate authorities were without power to buy gas stock, it could not have been a matter of much consequence to the court in that case whether the bonds sued on were in the form of commercial paper or not. It is evident, from the reasoning of the court, that the corporation would
57 have been liable for the debt incurred in the purchase of the gas stock but for the absence of the power to contract for such stock.

If the court had found that the city's agents were authorized expressly or by implication to bind the corporation for a debt contracted by them for the purchase price of gas stock there is nothing in the opinion of the court to induce us to believe that the mere form of the instruments used by the agents to evidence the corporation's promise to pay for the gas stock would have been sufficient to release the corporation from its lawful obligation to pay to the vendor or to his assignees the amount due them. The defendant in that case was released on the plea *ultra vires*, because the court substantially said there never was any liability incurred by the acts of the officials in purchasing such property; that there was no obligation sanctioned by law, and no recovery could be had.

But defendant contends that such bonds as these purport on their face to be, when issued for anything or to any person, are void. Conceding it to be true that the corporation had no authority to execute notes or bonds for any purpose which would be entitled judicially to the protection of the law merchant, does it follow that where the city's agents and all the parties to a contract sanctioned by law agree to give and take such instruments as would be so protected that the instruments so given and now held against defendant are for all purposes void? Will the fact that those
58 agents exceeded their power only in agreeing to give such instruments or exceeded their power merely and only in the selection of the means of evidencing the debt due the contractors invalidate and extinguish the obligation lawfully incurred by the corporation? If no debt sanctioned by the law could be incurred for such public work as the grading and otherwise improving the city's streets, then it would be a matter of no consequence to the city or to the constituents of the corporation what sort of evidences of the debt were issued, for the plea *ultra vires* would shield them against the debt; but the plea, if the debt is lawfully due and unpaid, will not protect the corporation against the payment of the debt because of an irregularity or error on the part of the city's agents in giving commercial notes instead of non-commercial vouchers or warrants.

To give such an effect to the plea, whoever may be the parties to the contract or whatever may be the irregularities in the instruments used to evidence a lawful debt, would be as unwarranted in good conscience as it would be novel in the administration of justice.

In the Dorian case we held that the bonds are not void and without effect; that if they were not in law entitled to the credit and force of commercial paper they certainly, under the authorities cited,

may be treated as evidences of simple obligations in favor
59 of the persons holding them.

When we tried that suit the several suits now submitted had not been presented, the bonds in the Dorian case did not amount to an appealable sum, and it was known that the series of bonds now sued on were outstanding against the city. Under such circumstances I thought it best to rest the court's opinion on the validity of the bonds as evidencing in favor of the *bona fide* holder a simple obligation against defendant.

In that case a written opinion sustaining the validity of the bonds in the way just stated was submitted to Judge Pardee, who certified his concurrence in the reasoning and conclusion therein.

In the Dorian case the plaintiff contended that the corporate authorities, having ample express power to provide, secure, and contract for the public work performed by the contractors to whom the bonds were issued, had also implied power to issue to them commercial instruments, and that these bonds being of such a character are in themselves a legal basis for recovery—the same point as urged in this case.

Considering that the public work for which it is agreed these bonds were issued was satisfactorily performed, that no equitable relief is sought by defendant, and all the suits covered by this opinion are for appealable sums, I have less hesitancy now than I
60 had when the Dorian case was tried in taking up and passing upon the validity of these bonds as commercial instruments.

The authority of the defendant's agents to secure and provide for certain public works is found in the express powers of the corporation. Out of those powers come by implication the authority to give promissory notes binding on the corporation. The implied powers, when deducible from the interpretations the law puts upon the meaning or extent of the express powers, are as good authority for the act of an agent as are the express authorizations in the mandate.

In this State it has frequently been held that an agent authorized to buy a thing may give his principal's note for the price. See 2 Rob., 244. The court say: "If the power to purchase be established the power to give the evidence necessary to secure the price necessarily ensues, and whether the credit be long or short is a matter of indifference." In 8 Rob. the court holds that the notes given to plaintiff being a contract made by defendant in the course of their legitimate business, no express authority is necessary in the charter to enable them to make it. "The city of Shreveport, having the right to purchase real estate under its charter, had the power, which was an implied one, to execute the note for the credit part of the purchase and to give a mortgage and vendor's privilege." 26 A., 636. "The city of Shreve-
61 port, having the authority to buy property, carries with — by implication the authority to give notes for the price." 26 A., 495.

The several cases applying to defendant city cited from the State's courts were decided when the charter powers to purchase real estate

were the same as they were in the charter existing at the time these bonds were issued, and it cannot be said that the express power to purchase real estate and the implied power in the city's agents to give promissory notes for the purchase price is more clearly expressed or implied in the charter then existing than was the power of the same agents to execute and bind the corporation on such notes for the credit price of work performed or for material furnished for improvements on the streets. The State court, in deciding that the city's agents were empowered to bind the corporation on notes given for the purchase price of the thing they were authorized to buy or provide for the city, were applying well-known rules in the law of principal and agent—that is, that the power to bind the principal by giving his promissory note for the price of the thing which he is expressly authorized to secure or furnish is an implied and incidental power, and if such a power is not prohibited the agent will be considered as possessing it by implication.

It is known that the authorities, as well in the Federal as in the State courts, are not uniform in their rulings upon the matter
62 we are considering; this does not exist because of any serious difficulties found in applying the law of agency, but largely upon the question as to whether the law of principal and agent, in a given case, shall be applied in considering the liability of a municipal corporation for the acts of their agents. If the power in the officials of a municipal corporation to do or procure a thing is sufficient, as in this case, it seems there can be no reason why in fixing the liability of the corporation the law of principal and agent should not be applied. In the two cases, one Britton *vs.* Police Jury, 15 Wal., the other Ray *vs.* Nashville, 19 Wal., the subject-matter of this suit was fully discussed. In the former the plaintiff, a *bona fide* holder of certain bonds, sued upon them as commercial instruments and payment was resisted on the plea *ultra vires*. Justice Bradley, finding no express power in defendant to issue such bonds, said: "We have, therefore, the question directly presented in this case whether the trustees or representative officials of a parish or a county or other local jurisdiction, vested with the usual power of administration in specific matters and the power of levying taxes to defray the necessary expenses of the jurisdiction, have an implied authority to issue negotiable securities, payable in the future, of such a char-
63 acter as to be unimpeachable in the hands of *bona fide* holders for the purpose of raising money or funding a previous indebtedness."

The commercial securities in that case were issued for the purpose of "funding previous indebtedness," and the court, not finding any express power to issue the bonds, said to issue commercial securities for such purposes does not belong to the governmental purposes of a parish, and therefore could not be considered as an implied power. The court, in so holding, announced a general principle, which forbids the authorities of municipal corporations possessing only the governmental powers, in the absence of express powers, to issue bonds, whether in a commercial form or not, to raise money or to fund outstanding indebtedness under the

exercise of implied powers, because to issue bonds for such purposes is not within the scope of a corporation's usual governmental powers; but the court, in order that the principle announced and upon which the bonds were held invalid should not be extended too far, said: "We do not mean to be understood that it requires in all cases express authority for such bodies to issue negotiable paper. The power has frequently been implied from other express powers granted. Thus it has been held that the power to borrow money implies the power to issue the ordinary securities for its repayment, whether in the form of notes or
64 bonds payable in the future. So the power to subscribe for stock in a railroad or to purchase property for a market-house and other like powers which cannot be carried on without borrowing money or giving obligations payable in the future have been held sufficient to raise the implied power to issue such obligations.

In Ray *vs.* Nashville, 19 Wal., 468, Justice Bradley, delivering the opinion, held that defendant corporation, possessing, as it did, only the usual governmental powers, could not issue commercial notes or otherwise bind the city for borrowed money, because no such power existed among the implied powers of the corporation; that the power to borrow money was not germain to the powers expressly given and was not a power necessary to carry out the purposes of the city government.

In reading the opinion and conclusion of the court it will be apparent that it could not have been a matter of consequence to Justice Bradley or to the three justices who agreed with him (in the Ray case) whether the bonds sued on in the Britton case or the drafts or notes in the Ray case were in a commercial or negotiable form or not; for them it seemed to be enough to know that the defendant corporation had no power to issue funds to take up out-
65 standing indebtedness or to borrow money, and could not be bound by the officials to pay it, whatever may have been the sort of instruments used between the parties. In the Ray case the court was composed of eight judges; four of them dissented. Among them was Justice Hunt, whose written opinion is reported, in which he said: "I hold it to be well established by the authorities that a municipal corporation may borrow money for the legitimate use of the corporation, and that it may issue its notes for the same, unless expressly prohibited by its charter or by some statute from doing so. The proposition that it cannot borrow money unless expressly authorized to do so is, in my opinion, unsustained by sound authority;" "that securities thus signed by corporations are subject to the rules of commercial law, when held by *bona fide* holders, has been repeatedly held by this court." Justice Hunt thought Ray was not a *bona fide* holder before maturity, and agreed to have the case remanded for the purpose of letting in equitable defenses. On the other issues mentioned the court was evenly divided.

Whatever conflict of opinion there may be among the courts
66 and judges as to the power of the agents of a municipal corporation, possessing only the usual governmental powers to bind their constituents by the issuing of commercial bonds or any other evi-

dences of indebtedness for borrowed money or on bonds issued to take up outstanding indebtedness, we are, after a very careful and general examination of authorities, unable to find a single case in which the power of the city's agents to evidence the credit price of a thing which they were authorized to secure, provide for, or purchase was judicially denied.

In Desmond *vs.* Jefferson, 19 Fed. R., 486, plaintiff sued on bonds issued for the purchase price of a fire engine—alleged them as commercial securities to be a legal basis for recovery. Defendant resisted payment on the plea *ultra vires*. The defendant city possessed the usual governmental powers. Among these powers was the power "to organize a fire department." The court thought the defendant, having the power to organize a fire department, had ample power to buy an engine and give such securities for the purchase price, and said: "There is no case to be found where, if the power is given by specific grant or by necessary implication to provide for or buy the thing, the courts have held that this character
67 of paper is not obligatory upon the municipality."

In 1 Wal., 273, the defendant city had power to subscribe to a city railway company "as fully as any individual." The corporation was sued on negotiable bonds issued for subscription to the company and resisted payment on the ground that her agents were not authorized to issue the negotiable bonds. The court said the power to subscribe was a power to create a debt, and consequently to give evidence of the debt. The power to subscribe in such a way was given, and if they legally owed a debt it follows that they can give a bond for it.

The power in that case was broadly given. So in the pending case it would seem that the power to pass all ordinances not inconsistent with the laws of the State which the city's agents may deem proper in relation to such public works as were performed by the contractors to whom these bonds were given, considered with the fact that the defendant's agents could collect taxes, unlimited in per centum or gross sum, annually for the well regulating of the town, should, we think, enable the authorities to secure such public works in any way that agents are usually empowered to act for their
68 principals. The weight of authorities upon the power of a municipal corporation to execute bonds to be placed on the market for the purpose of raising money to be expended by the city's agents or for the purpose of funding outstanding indebtedness seems to— generally against the exercise of the power, except in cases where the power is derived from legislative authority, expressed or implied. The reason for such ruling is well known, in the fact that municipal corporations are established to enable the people in towns and cities to have the benefits of local government. Unlike trading or business corporations, their powers, unless otherwise directed by express or implied grant, should be and are in law, as well as in public policy, limited to such as are governmental or administrative in their nature or scope—to such as are necessary to conserve the purposes of their municipal organism.

So far as the contractors to whom these bonds were originally

given are concerned with their issue, it cannot be said that they were issued for the purpose of borrowing money or for the purpose of funding outstanding indebtedness of the city, for it is not denied that they were given to the contractors in pursuance of an agreement to the effect that one-half the amount due them for the
69 public work should be paid in cash and the balance should be evidenced as a debt against the city by ten-year negotiable bonds, some of which are now held by plaintiff. The contractors agreed to take commercial bonds or securities, and as such securities are known to be more valuable in commerce than instruments not protected by commercial law, it may be fairly presumed that the fact that such bonds were to be given to them instead of non-commercial securities enabled the contractors to perform the work, and entered largely, if not in a controlling way, into their ability, motive, and reason for undertaking the public works. If it be conceded that the city's agents had the power to incur a debt sanctioned by law against the corporation for such works as the contractors in this instance faithfully furnished and performed, it does not seem inconsistent with public policy nor at variance with the jurisprudence of Louisiana or the decisions of the United States courts to hold that such authorities or agents are authorized in the implied powers of their mandate to evidence such a debt by giving such commercial notes or bonds as are now held by plaintiff. In reaching our conclusion in the Dorian case, as well as in this
70 suit, we have kept in mind the rule which seems to be generally observed when the Federal courts are employed in interpreting the powers of municipal corporations to lawfully incur a debt—that is, that doubts, if there be any, as to the power of the city's agents to incur the particular debt should be charged to the obligee, as in this case the plaintiff.

But in deciding now in favor of the validity of these bonds as commercial securities it cannot be said that we are imposing upon or enforcing against the constituents of the corporation a debt doubtful in its origin, or one not lawfully incurred, or one not justly due to somebody, because it is clear enough that the debt is unpaid and that the city's agents had ample power to ordain and direct that the public work should be done, and to legally bind the corporation for the debt—that is, for the price of the public work.

Judgment for plaintiff.

(Sig.) ALECK BOARMAN, *Judge.*

71 *Minutes of Court.*

UNITED STATES OF AMERICA, *Western District of Louisiana:*

This being the third Monday of the month of July, A. D. 1886, and by law the first day of the July term of the circuit court of the United States for the fifth judicial circuit and western district of Louisiana, the same was duly opened by the marshal.

Present: His honor Aleck Boarman, judge, presiding.

E. H. CARTER
vs.
THE CITY OF SHREVEPORT. } Nos. 108, 111, 116.

Motion for recusation filed & same assigned for argument on Tuesday, July 20th, 1886, in all these cases, from 104 to 112.

THURSDAY, *July 29th*, 1886.

Court met pursuant to adjournment.

E. H. CARTER
vs.
THE CITY OF SHREVEPORT. } Nos. 108, 111, 116.

On motion of T. Alexander, attorney for defendant, the motion-filed in the above-named cases on Monday, July 19th, 1886, be, and the same are hereby, withdrawn. Agreement of counsel filed in these cases and made part of the record.

FRIDAY, *July 30th*, 1886.

Court met pursuant to adjournment.

E. H. CARTER
vs.
THE CITY OF SHREVEPORT. } Nos. 108, 111, 116, Consolidated.

Answer & plea of prescription filed.

72 UNITED STATES OF AMERICA,
Western District of Louisiana:

SHREVEPORT, MONDAY, *February 21st*, 1887.

This being the third Monday of the month of February, A. D. 1887, and by law the first day of the February term of the circuit court of the United States for the fifth judicial circuit, western district of Louisiana, the same was duly opened by the marshal.

Present: His honor Aleck Boarman, judge, presiding.

WEDNESDAY, *March 2nd*, 1887.

Court met pursuant to adjournment.

E. H. CARTER
vs.
THE CITY OF SHREVEPORT. } Nos. 108, 111, 116, Consolidated.

These cases, as per assignment, came on to be heard. A jury having been waived and both sides having announced themselves ready for trial, the cases were proceeded with.

Note of Evidence.

Plaintiff offers in evidence—

1st. All the evidence offered on the trial of the case Simon Levy *vs.* The City of Shreveport.

2nd. Acts of the Legislature of Louisiana relative to the city of Shreveport, viz: Acts of 1839, page 200; acts 1850, acts of 1853, page 198; acts 1859, page 121; acts 1866.

3rd. Ordinance of the city of Shreveport, of date July 3rd, 1866.

73 & 74 4th. Ordinance of the city of Shreveport, of date April 4th, 1871.

5th. Forty-two (42) bonds of the city of Shreveport.

6th. Note of evidence taken on the trial of the case Simon Levy *vs.* The City of Shreveport, filed February 24th, 1885.

Testimony closed and case submitted.

MONDAY, *March 7th*, 1887.

Court met pursuant to adjournment.

E. H. CARTER *vs.* THE CITY OF SHREVEPORT. } Nos. 108, 111, 116, Consolidated.

It is ordered by the court that there be judgment in favor of the plaintiff, E. H. Carter, against the defendant, The City of Shreveport, for amounts claimed in petitions, & interest.

75 *Additional Agreement of Counsel.*

In cases—

J. R. HOLMES *vs.* CITY OF SHREVEPORT.
J. B. CROOKS " " " "
E. H. CARTER " " " "

It is agreed that plaintiffs may offer, in addition to evidence previously adduced by them, following evidence, viz: The records in cases Simon Levy, M. A. Hackett, A. H. Leonard, J. G. McWilliams, R. T. Buckner, W. P. Ford, Leon M. Carter, Mattie L. Parsons, ex't'rs; G. W. Robinson, Kate O. Holmes, S. Herold, Mattie L. Carter, Edward Jacobs, Ben. Jacobs, J. F. Looney, R. R. Riggs, W. C. Harris, A. W. O. Hicks, & Wm. Enders *vs.* City — Shreveport, & also the citations in said cases, with return- thereon, & that said evidence shall be considered as having been offered on trial had.

(Sig.) ALEXANDER & BLANCHARD,
Att'ys for Def'd't.

(Endorsement:) Agreement of counsel. Filed July 29, '86, & Mar. 2nd, '87. (Sig.) J. W. Wheaton, cl'k.

76 *Clerk's Certificate.*

CLERK'S OFFICE.

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 75 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial in the cases of E. H. Carter *vs.* The City of Shreveport, Nos. 108, 111, & 116 (consolidated) of the docket of the said court.

Returned in obedience to writ of error, original of which is hereto annexed.

Witness my hand and the seal of said court, at the city of Shreveport, this 23rd day of May, A. D. 1887.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clk.*

Judge's Certificate.

I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that John W. Wheaton, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that
77 & 78 full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of Shreveport, in said district, this 23rd day of May, A. D. 1887.

ALECK BOARMAN, *Judge.*

Clerk's Certificate.

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that Aleck Boarman, whose name is signed to the foregoing certificate as United States judge for the western district of Louisiana, was at the time of signing said certificate and is now the judge of said court.

Witness my hand and the seal of said court, at the city of Shreveport, this 23rd day of May, A. D. 1887.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

79 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable judge of the circuit court of the United States for the fifth circuit, western district of Louisiana, Greeting:

Because that in the records & process, and also in the rendering of judgment in a suit before you or some of you, between The City of Shreveport, La., plaintiff in error, and E. H. Carter, a citizen of the State of Texas, defendant, a manifest error has intervened, to the great damage of the said plaintiff in error, as in his complaint stated, and as it is just & proper that the error, if any there be, should be corrected in due manner and that full & speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record & process in the suit aforesaid, with all things concerning them, and this writ,

so that you have the same before the Chief Justice and asso-
80 ciate justices of the Supreme Court of the United States on the second Monday of October next, at Washington, being present seat of the National Government, that, the record & process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this the 14th day of March, in the year of our Lord 1887, and of the Independence of the United States the one hundred & eleventh.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

81 [Endorsed:] Nos. 108, 111, 116, consolidated. City of Shreveport *vs.* E. H. Carter. 14. Writ of error. Filed March 14, '87. J. W. Wheaton, cl'k.

Endorsed on cover: W. Louisiana C. C. U. S. No. 1123. The City of Shreveport, Louisiana, plaintiff in error, *vs.* E. H. Carter. Filed October 7, 1887.

In the Supreme Court

OF THE

United States.

CITY OF SHREVEPORT

vs.

E. H. CARTER.

SAME

vs.

JOHN R. HOLMES.

SAME

vs.

JOHN B. CROOKS.

Error to the Circuit Court of the United States for the Western District of Louisiana.

Brief of Plaintiff in Error.

STATEMENT OF THE CASE.

On June 3, 1869, the City Council of the City of Shreveport passed an ordinance providing for the issuance of bonds to the amount of two hundred thousand dollars. The bonds to be two hundred in number, each

for the sum of one thousand dollars, due in ten years and to bear interest at the rate of eight per cent per annum, with interest coupons attached.

The object and pnrpose for which the bonds were to be issued, as stated in the preanble of the ordinance itself, was. "in order to meet the demands of the city, and to provide the means for making such permanent improvements upon the streets and wharf, etc, as its growth and the increase of its population and trade seems at this time to require."

The ordinance further provided that the bonds should be at once put upon the market for sale and disposed of for not less than eighty cents on the dollar.

The only provision in the ordinance looking toward a provision for the payment of the bonds and interest, is to be found in section 4, which reads as follows: "There shall be set apart from the revenues of this city, semi-annually, the sum of eight thousand dollars, to meet the payment of the interest upon said bonds as the same becomes due, and to meet the payment of the principal of said bonds, there shall be set apart from said revenues the sum of twenty thousand dollars annually, as a sinking fund; it shall be the duty of the mayor and trustees of the city to levy annually, upon all taxable property in the city of Shreveport, such amount of tax as shall fully provide for the payment of said interest and the

creation of said sinking fund, in addition to the payment of the current and ordinary expenses of the city government."

Failing in getting money on the bonds by floating them on the market, the City Council adopted the expedient of using them in lieu of money in paying off contractors. In other words, they would advertise for proposals to do certain work on the streets, etc., the bids to state the lowest price in "city bonds." The contractor would then go into the market, ascertain what he could probably sell the bonds for in money, and then make his bid accordingly. In this way, the limitation in the ordinance, that the bonds should not be sold for less than eighty cents on the dollar, was evaded. In this way some fifty bonds were issued.

Twelve bonds were exchanged for a lot of ground to be used for a park, three were used for improving a right of way for a street, and five were donated to the fire department, to enable them to build an engine house and hall,

The bonds were issued in 1870 and the early part of 1871, and from the date of their issuance up to August, 1877, the interest coupons on them were paid by the city with some degree of regularity. In the early part of August, 1877, the decision of the Supreme Court of Louisiana in the suit of J. D. Wilson vs. City of Shreve-

port(29 A. 673) was rendered, and from that time the city refused to recognize the validity of the bonds, or to provide for their payment.

The original parties who dealt with the city, and to whom the bonds were issued, are none of them parties to, or plaintiffs in, these suits.

No transfer, assignment or subrogation to the plaintiffs, of the claims, contracts or rights of the original parties who dealt with, or peformed the work for the city, and to whom the bonds were paid, is proved, or in any manner shown by the evidence on record.

The defense of the city to this action is: First. A plea of *ultra vires*, that the city was utterly without power or authority to issue bonds of any kind.

Second. That the bonds were issued, and the various debts contracted in violation of a prohibitory law, section 2448 of the Revised Statutes of Louisiana, which prohibits municipal corporations in the State, from "contracting any debt or pecuniary liability without fully providing in the ordinance creating the debt the means of paying the principal and interest of the debt so contracted."

Third. That the claims or debts for which the bonds were given, were at the date of the institution of these suits prescribed or barred by the statutes of limitation.

A stipulation was filed waiving a jury trial, and the court made a special finding of the facts.

The lower court overruled the plea of prescription and rendered judgment in favor of the plaintiffs.

The points of law upon which the judge of the lower court based his decision, and stated in the syllabus of the case furnished by him to the Federal Reporter, Vol. 31, page 113. We quote it:

"The defendant city, being authorized by its charter to contract for certain public works, agreed to pay to certain contractors one-half cash, and the balance in 10-year coupon bonds, for performing said works. A number of such bonds were issued in pursuance of said agreement and this suit was brought by persons to whom these bonds, before their maturity, were transferred. *Held*, that the officials of a municipal corporation, which is vested with the usual powers of such bodies, are authorized to issue bonds, or promissory notes, to evidence the credit price of any works for which they are authorized to contract, which, in the hands of a *bona fide* holder, will be protected by the law-merchant; that the express authority in an agent to buy, provide for, or procure a thing for his principal, carries with it the implied power to give the latter's negotiable note for the price of the thing, and that this rule applies to the officials or agents of such corporations."

ASSIGNMENT OF ERRORS.

1. The court erred in holding that there existed any *implied* power in the officers of the City of Shreveport to issue the bonds sued on.

This ruling was in direct conflict with the ruling of this court in Claiborne County vs. Brooks 111, U. S., 400. Police Jury vs. Britton 15 W., 566, and Mayor vs. Ray 19, W 468., and also the decision of the Supreme Court of Louisiana in Wilson vs City of Shreveport 29 Louisiana annual reports 673.

2. The court erred in holding that the city was estopped by the recitals of the bonds from showing that they were issued in contravention of the statutes of the State, and were therefore null and void.

Section 2448 of the Revised Statutes of Louisiana prohibits the authorities of incorporated towns and cities in the State from contracting any debt or pecuniary liability without *fully providing in the ordinance creating the debt, the means of paying the principal and interest of the debt so contracted.*

Article 12 of the Civil Code of Louisiana declares, "whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed."

Whether the ordinance creating the debt did, or did not, *fully provide* for the payment of the principal and interest of the debt so contracted, as contemplated in the

statute, is *purely a question of law*, and "a recital of matters of law does not estop the corporation." Dixon Co. vs. Field, 111 U. S., 83; Buchanan vs. Litchfield, 102 U. S., 278; National Bank vs. Porter townshp, 110 U. S., 608; Daviess Co. vs. Dickinson, 117 U. S., 657.

3. The plea of prescription was not raised against the action upon the bonds proper. We admit that if the city had a right to issue the bonds as negotiable securities, that as such under article 3540 of the Revised Civil Code of Louisiana, they would not have been barred by limitation until five years after their maturity, viz: On October 1, 1884. That a suit having been brought upon them on August 30, 1884, prescription was interrupted, notwithstanding that suit was brought by other parties then holding the bonds, and that such suit was dismissed on a plea to the jurisdiction.

If, however, it is contended that in these suits the bondholders can assert the rights of the original contractors, to whom the bonds were issued, by virtue of any pretended equitable assignment, then the plea should be sustained, such claims for work done, or labor performed having been long since barred by the provisions of articles 3538 and 3544 of the Civil Code, of Louisiana.

The contractors received the bonds in payment, and not simply as vouchers for the work done under the

contracts, and they transferred them to the various parties as negotiable bonds, and not as parts and parcels of certain contracts. Hence the plaintiffs in these suits are not in a position to claim that the original obligations of the city to its contractors have been kept alive for their benefit, simply beause they hold the bonds.

ARGUMENT.

The city pleads *ultra vires* to the action on the bonds, and the record fails to disclose any power or authority whatsoever in the city at the time to issue any kind or denomination of bonds.

We have appended to this brief copies of all acts of the Legislature granting powers to the corporation, or City of Shreveport, from the original charter down to the date of the issuance of these bonds, and an examination of them will show that no powers were given to it to issue bonds of any kind. In fact the word bonds is not to be found anywhere, except in the amendments of 1850 and 1853, where the city is empowered to give and receive bonds in matters of litigation, and to secure the faithful performance of their duties by its officers and employes.

It will be seen that the act of 1859 provides a special manner of improving the streets, by paving and macadamizing, viz: That one-third the cost is to be borne by the front proprietors under a special assessment made therefor.

It has also been claimed by counsel for defendants in error, but we presume will not be seriously urged before this court, that there has been a legislative ratification of the issuance of these bonds, for the reason that when the old charter was repealed and a new one enacted in 1871, (Act No. 98) providing, as is usual, for the transfer of the rights and liabilities of the old corporation to its successor, the following language is used: * * * * "And all other indebtedness or liabilities of the City of Shreveport, whether in the form of bonds, notes, interest coupons, cash warrants, or any species of obligations whatever, should be assumed and paid by the City of Shreveport, as constituted and incorporated by this act."

It is idle to argue that by this language the Legislature intended to impose upon the new corporation the payment of anything except the existing legal and valid indebtedness of the old one. Because the words legal and valid are not used, does not signify that the Legislature intended to make valid and binding all spurious or void claims that might be pending against the city. It meant just what the language used clearly implied, that all valid existing indebtedness of the old corporation, whether in the shape of bonds, warrants, or what not, was imposed upon the new, in the same manner. and to the same extent, and no further.

If the Legislature had intended to ratify the issuance of the bonds it would have done so in plain language; an act so important cannot be left to inference. On a similar question in the case of Hayes vs. Holly Springs 114 U. S., 126, this court used this language:

"The intention of the Legislature to confirm and ratify the subscription in question cannot be ascertained with certainty, from the language of the act, which is too vague to form the basis of so important an authority as that sought to be deduced from it. As is said in State vs. Stoll 17 Wall, 425, 436, if the Legislature intended to do what is claimed "it was bound to do it openly, intelligibly and in language not to be misunderstood" and "as a doubtful or obscure declaration would not be justifiable, so it is not to be imputed."

The power of the City of Shreveport to issue bonds was presented and directly decided by the Supreme Court of Louisiana in the suit of J. D. Wilson vs. City of Shreveport, reported in 29th Annual Reports, page 673. In that case bonds similar to those sued on here were held to be absolutely null and void even in the hands of a *bona fide* holder, and the court further held, after a full examination of all the charters of the city, up to that of April, 1871, and of all the various legislative acts upon the subject, that the city was without power, either express or implied, to issue any class of bonds whatsoever.

The bonds sued on in that case were identical with those sued on here. Those were issued in 1866, these in 1869, but the powers of the city remained the same, no amendment or change in the charter having been made in the interval.

It would be a waste of time for us to add anything by way of argument to the force and effect of that decision. It is a well reasoned and able opinion of an unanimous court, directly upon the question presented here. The bonds sued on in that case had been issued in payment for gas stock, bought by the city, and used for its benefit in lighting the streets, and the plaintiff was certainly entitled to as much sympathy and equitable consideration as are the various parties here. Being a final judgment of the highest court of last resort in the State, that decision is binding upon the courts of the United States. It has, in fact, been quoted approvingly by the Supreme Court of the United States, in the recent case of Lewis vs. City of Shreveport, 108 U. S., 282.

"When the settled decisions of the highest court of a State have determined the extent and character of the powers which its political and municipal organizations shall possess, the decisions are authoritative upon the courts of the United States." Claiborne vs. Brooks, 111 U. S.; Wells vs. Supervisors, 102 U. S., 625.

The doctrine laid down by the Supreme Court of Lou-

isiana in the case of Wilson vs. City of Shreveport, is supported in its fullest extent by the decisions of the Supreme Court of the United States. Among others the following: Marsh vs. Fulton Co., 10 W., 676 Police Jury vs. Britton, 15 W., 566; Mayor vs. Ray, 19 W., 468; McClure vs. Town of Oxford, 94 U. S., 429; Ottaway vs. Carey, 108 U. S., 110: Northern Bank vs. Porter Township, 110 U. S., 608; Dixon Co. vs. Field, 111 U. S., 83; Claiborne Co. vs. Brooks, 111 U. S., 400; Hayes vs. Holly Springs, 114 U. S., 120; Concord vs. Robinson, 121 U. S., 165; Katzenberger vs. Aberdeen, 121 U. S., 172.

The payment of the coupons by the city authorities for a series of years, cannot estop the City of Shreveport from afterward denying their validity, and they could never ratify, so as to make valid an obligation which they had no power originally to create. Marsh vs. Fulton Co., 10 W., 676; Daviess Co. vs. Dickinson, 117 U. S., 657.

The law upon this point is thus tersely stated in the recent case of Lewis vs. Shreveport, 198 U. S., p. 287; "Corporate ratification, without authority from the Legislature, cannot make a municipal bond valid which was void when issued for want of legislative power to make it."

The doctrine of *implied* powers of corporations, which is

asserted in the opinion of the lower judge, and upon which he rests his judgment, is not only in direct conflict with the decision of the Supreme Court of Louisiana in the Wilson case, and others, but is also in direct opposition to the rulings of this court in Police Jury vs. Britton, 15 W., 566, Mayor vs. Ray, 19 W., 468, and Claiborne Co. vs. Brooks, 111 U. S., 400.

In this latter case the bonds sued upon were issued for the purpose of erecting a courthouse, and the lower court held, as does the lower judge in this, that the county officers having had the power to make a contract for the erection of a courthouse, they had the implied power to issue bonds for its payment. This court distinctly declared this ruling to be erroneous and reversed the judgment.

The charge of the Circuit Court in that case, which was expressly overruled by this court, was as follows: "That the power to erect implied the right to contract for the same, and if the county had the right to make a contract for the erection of the courthouse, that it had the incidental or *implied* power to execuce a note, bond or other negotiable security in payment of such contract, and might legally issue such an instrument as the bond sued on."

"That a corporation with power to make a contract like an individual, might make and issue commercial

paper as evidence of or a security for the contract," And yet the judge who decided this case below repeats almost *in totidem verbis*, the language of this charge as the law ot this case. We quote from his opinion: "If it be conceded that the city's agents had power to incur a debt sanctioned by law against the corporation for such works as the contractors in this instance faithfully furnished and performed, it does not seem to be inconsistent with public policy, nor at variance with the jurisprudence of Louisiana, or the decisions of the United States Courts, to hold that they are authorized, in the implied powers of their mandate, to evidence such a debt by giving such commercial notes or bonds as are now held by plaintiff."

The plea of *ultra vires* is fatal to the bonds, but yet anotehr defense set up in the answer destroys them completely, and even goes further, to render the contracts themselves invalid. That defense is that the contracts were made and bonds issued in contravention of a prohibitory law, to-wit; Section 2448 of the Revised Statutes of Louisiana, which reads as follows:

"The police juries of the several parishes, and the constituted authorities of incorporated towns and cities in this State, shall not hereafter have power to contract any debt or pecuniary liability, without fully providing

in the ordinance creating the debt, the means of paying the principal and interest of the debt so contracted."

This provision of our law has been repeatedly upheld and rigorously enforced by the Supreme Court of Louisiana. It matters not what the emergencies of the case or the necessities of the parish or town may have been, the law is held to be prohibitory and not to be evaded. In some of the cases contracts for the erection of public buildings, courthouse, jails, etc., absolutely essential to the parish, and which, when completed, were actually received and used by them, were all alike held to be illegal and not binding obligations; 23 A., 190, 232, 251; 24 A., 457; 26 A., 150; 27 A., 319; 28 A., 343; 29 A., 673; 30 A. 461; 31 A., 179; 32 A., 392; 36 A., 427.

But in these particular cases we need not look beyond the decision in Wilson vs. Shreveport, already referred to, for it is not simply analagous, it is directly in point The ordinance under which the bonds were issued in that case is substantially the same as in these. In that case, as here, it was claimed that the requirements of the statute were sufficiently complied with in the ordinance, because ten thousand dollars a year was declared in the ordinance to be set apart from the annual revenues of the city, to pay the interest and part of the pricipal, and the revenues to be derived from taxation were declared pledged for the faithful payment of the bonds. But the

court held that this was not a compliance with the requirements of the statute. They held:

"The statement in the bonds that the city 'for the faithful payment has pledged all the revenues derived from the taxation of real estate and person property,' is not more obligatory than the promise to pay; and it could be disregarded with the equal facility and impunity. What the law means by 'providing fully in the ordinance for the payment of principal and interest,' it has taken care to explain in very simple terms. The succeeding section, five, of the act of 1855 says: 'The ordinance or enactment providing for the payment of the principal and interest of any debt created by any board of police, or authorities of incorporated towns and cities, shall remain in full force until the debt and interest is paid."

In other words the court held that the ordinance creating the debt must provide for its payment by either appropriating out of the cash on hand, the money to pay it, or else to levy a tax, in the ordinance itself, of a certain rate per centum upon the value of all its taxable property, to be paid annually until the debt is extinguished. And this is undoubtedly in accordance, not only with the letter, but the spirit of the law. The intention was to restrain and prevent municipal extravagance, by causing them to look before they leaped, to

consider both the rate of taxation, and the number of years they were to bear its burden, before contracting the liability.

The necessity of such a provision, and its application, is sharply presented in the cases at bar. Here is an ordinance authorizing the issuance of two hundred thousand dollars in bonds, at one sweep, and yet the ways and means for its ultimate payment is in no manner provided for. True the ordinance does say "there shall be set apart from the revenues of the city, semi-annually the sum of eight thousand dollars to meet the payment of the interest upon said bonds as they become due, and to meet the payment of the principal of said bonds, there shall be set apart from said revenues the sum of twenty thousand dollars annually as a sinking fund," but is this any *provision for the payment* of the bonds, or does it add anything to their binding force. Was it not already the duty of the city council to setapart from the city revenues sums sufficient to pay all its indebtedness, and would it not have continued to have been the duty of each succeeding council to levy taxes to meet the maturing indebtedness of the city, even if the ordinance creating the bonds had not in general terms so declared?

As was said in a recent decision of the Supreme Court of Kentucky, reported in Volume 4, page 524 of American and English corporation cases, "If the reception of

work done under a void contract, or its ratification by the town makes it responsible; then the provisions of its charter may be disregarded in every instance where the city has derived benefits from improvements made within its boundary, although its authorized agents may have failed when making the contract or passing the ordinance to comply with the requirements of the charter. If the town is made responsible by reason of its inherent power to improve its streets, then it follows that such a power must exist with reference to all improvements conducive to the welfare of the city, and the necessities of those living within the corporate limits."

"The duties and powers of municipal corporations are prescribed by statute, and to make them liable like natural persons would be to license those who are entrusted with corporate control to place onerous burdens upon the inhabitants in the way of taxation and otherwise, regardless of the power and restrictions found in the charter, and by which alone the rights of the corporation must be determined."

The only remaining question is this: If the bonds are *ultra vires* and not binding obligations of the city, have the plaintiffs in these actions any right to recover on the ground that certain parties did work under contracts for the city, to whom the city in payment gave the bonds,

and the holders of these bonds, simply as holders thereof, are entitled to judgment in their favor against the city for the value of the work done under the original contract.

This point was urged before the lower court by counsel for plaintiffs, defendants in error, but it will be seen from the judge's opinion that he did not adopt this position of counsel, but based his ruling entirely upon the validity of the bonds sued upon, as commercial securities.

In the first place the same objection that applies to the bonds—the want of any provision in the ordinance creating the debt, providing for its payment—applies with equal force to the original debts or contracts themselves. Even more so, for in contracting the debts for the various improvements no provision of any kind was made for their payment.

But leaving this out of view, what right of action have these plaintiffs against the city, on the original contracts made by other parties with the city?

We call the court's attention to the fact that *none of these bondholders ever had any contract with the city.* This is not even alleged, on the contrary, they do allege that the contracts were *between the city and other persons who are no parties to these suits,* and have no interest therein.

There is no privity of contract whatsoever, either al-

leged or shown, to have existed between plaintiff and the city in relation to the contracts for work. The facts are that the bonds being on their face negotiable paper, payable to bearer, were bought and sold as such, and in the course of trade came into the hands of plaintiffs, not as parts of any contract, but as commercial paper. Besides none of the bonds bear upon their face any ear marks, or anything to indicate to whom they were issued, or for what purpose. They are all of the same date, October 1, 1869—long anterior to the performance of the various work by the contractors—are all payable to bearer, and state in a general way that they are issued "for improvement and extention of the avenues of trade and other purposes."

The case of Hitchcock vs. Galveston, relied on by counsel for defendant in error, is not applicable. That was a suit for breach of contract. Work had been begun and a part of it performed. No bonds had been issued and received in payment, and the suit was brought by the contractor himself.

This question, however, is settled by a decision of this court adversely to this position. In Buchanan vs. Litchfield, 102 U. S., 278, the plaintiff was a *bona fide* holder for value of the bonds sued on. The bonds were issued by the City of Litchfield for the erection of water-works for the use of the city, and it was alleged and

proved that the plaintifis' money had been received by the city and faithfully applied to the construction and maintenance of those works. The defense there, as here, was that the city had no power to issue the bonds and that they were issued in violation of law.

The court in its opinion, page 293, says:

"Our attention is called by counsel to the exceeding hardship of this case upon those whose money, it is alleged, has supplied the City of Litchfield with a system of waterworks, the benefits of which are daily enjoyed by its inhabitants. The defense is characterized as fraudulent and dishonest. Waiving all considerations of the case, in its moral aspects, it is only necessary to say that the settled principles of law cannot, with safety to the public, be disregarded to remedy the hardships of special cases."

"Whether the city is under legal obligations to make restitution of the money, obtained without authority of law, that is, to refund to the proper party or parties such sums as were actually received by its authorized agents or officers upon the sale of bonds, is not a question arising in the present action, which is only for the recovery of the stipulated interest on such bonds. Upon this point it is not proper at this time, or in this form of actin to express an opinion."

The sequel to that case is Litchfield vs. Ballou and

others, 114, U. S., 190, where the bondholders proceeded in *proper form*, by a *bill in chancery*, to enforce their claims.

This is purely an *action at law*, and the only issue raised, or that can be presented in this form of action is the validity of the bonds.

Whenever the *equitable* nature of the bondholders' claims are properly presented before the court, as in the cases of Parkersburg vs. Brown, 106 U. S., 487, Chapman vs. Douglas Co., 107 U. S., 348, and Litchfield vs. Ballou, 114 U. S., 190, it will be time to meet that issue.

There has never been presented before this court a more glaring and reckless case of extravagance on the part of a municipal corporation than is presented here. It is shown that in 1866 the council authorized the issuance of bonds to the amount of one hundred and fifty thousand dollars, and in 1869—the series here sued upon—to the amount of two hundred thousand dollars, the first payable in five, the last in ten years, all bearing eight per cent interest from date, payable semi-annually, and yet at that time the population of Shreveport was *less than four thousand* souls, nearly half of whom were colored, and non-taxable.

To be accurate, the census of the United States for 1870, shows that in that year the population of Shreve-

port was 4,607, and of whom 2,168 were colored. The present population, as shown by the United States census of 1880, is 8,009, of whom 4,790 are colored.

Still the municipal officers of this village authorized the issuance of $350,000 in bonds maturing within the short period of five and ten years, and bearing interest at the rate of eight per cent per annum, payable semi-annually. It would be useless to attempt to show that there existed any necessity for the creation of such a huge indebtedness.

The *bona fide* character of the acquisition of the bonds by the present holders is sufficiently shown by the fact that these identical bonds were sued upon by other parties on August 30, 1884, just one month before they would have become finally barred by the statute of limitations, and seven years after the city, under the ruling of the Wilson case, had ceased to pay interest on them, or to recognize their validity. These suits were finally dismissed by the Circuit Court on a plea to the jurisdiction, on February 10, 1886; see Levy and others vs. City of Shreveport, 28 Federal Reporter, 209. Afterwards. on July 5, 1886, these suits were brought on the same bonds, by the present *bona fide holders for value.*

Involving, as this case does, only questions of law, it would be useless, if not improper, to appeal to the sympathies of the court, but we cannot forbear to call atten-

tion to the vital importance; to the citizens of Shreveport, of the issues here presented. To enforce the payment of the bonds with accumulated interest against the City of Shreveport would virtually amount to the confiscation of the property of the taxpayers within its limits.

The judgment of the lower court is erroneons, and we ask that it be overruled. Respectfully submitted,

E. H. RANDOLPH,
ALEXANDER & BLANCHARD,
Attorneys for Plaintiffs in Error.

APPENDIX.

Showing powers of the City of Shreveport under its original charter, with subsequent acts of the Legislature amendatory thereof, up to time of issuance of bonds in 1869. Also copy of city ordinance authorizing issue of bonds sued upon.

Original charter, Act No. 67, 1839, page 200. "An act to incorporate the town of Shreveport," etc.

"Section 1. Be it enacted, etc., that all the tract or portion of land situated in the Parish of Caddo, on the southwest bank of Red river, laid off and divided into lots by the Shreveport company, and known as the reservation made by the Caddo Indians to Larkin Edwards, consisting of six hundred and forty acres, more or less, shall continue to be designated and known as the town Shreveport, and that all the free white inhabitants of said town are hereby declared to be a body corporate, by the name and style of "the Mayor and Trustees of the Town of Shreveport" and by that name they and their successors shall be known in law, and be capable of sueing and being sued, and of defending in all courts and in all

actions and matters whatever, and may have a common seal, and may alter and change the same at their pleasure, and by the same name shall be capable of holding and conveying any estate, real or personal, for the use of said corporation, and of erecting within said town public buildings for the use of same; provided that such real estate shall be within the limits of said town."

"Sec. 6. That the trustees, or a majority of them, one of whom shall be mayor, shall form a quorum for the transaction of business, shall meet at their own adjournment, shall have the power of raising money by direct tax, not exceeding one thousand dollars in any one year, for the improvement and police of said town, shall have power from time to time to make such by-laws in writing not inconsistent with the laws and constitution of this State, or of the United States, as they may deem proper, in relation to public markets in said town, and relative to the streets, alleys and highways therein, draining, filling up, and keeping in order and improving same, to nuisances in general, relating to town watch and patrol, to regulate the assize of bread and meat within said town, and shall have the exclusive right to establish such ferries across Red river, within the limits of the town, as they may deem expedient, and to apply the resources arising therefrom to the improvement of the same, and to make such further regulations

as may conduce to the good government and police of the town,"

Act No. 190 of 1850, p. 123:

"Sec. 1. Be it enacted, etc., that all the tract or portion of land situated in the Parish of Caddo, on the southwest bank of Red river, laid off and divided into lots by the Shreveport company, and known as the reservation made by the Caddo Indians to Larkin Edwards, consisting of six hundred and forty acres, more or less, shall continue to be designated and known as the town of Shreveport, and that all free white inhabitants of the said town of Shreveport are hereby declared to be a body corporate by the name and style of the mayor and trustees of the town of Shreveport, and by that name they and their successors, shall be henceforth known in law, shall be capable of sueing and being sued, defended and being defended, impleading and being impleaded in all courts and places whatsoever, and in any and all manner of cases and actions, shall be capable of acquiring, receiving, holding, farming, leasing or conveying any property real or personal, of making any compromise, arbitration or transaction in regard thereto; shall have authority to adopt a common seal, and the same at their pleasure to change or alter; to erect such public works and buildings for the use and advantage of said town as they may find expediient, to give and re-

ccive bonds, which shall be as effective in law as other bonds under the laws of this State, and also to levy and collect annually a direct tax on real estate, which tax shall be assessed on the freeholders, householders, landlords and slaveholders, and on slaves hired in the limits of the corporation, not to exceed in any one year, two thousand dollars, for the improvement, comfort and well regulating of the said town."

Act No. 232 of 1853, page 198, amends section one of the above act of 1850 by simply striking out the words "not to exceed in any one year two thousand dollars."

Act No. 156 of 1859, p. 120, authorizes the mayor and trustees to abolish certain offices, to acquire property outside of the corporate limits for pest houses, cemeteries, etc.

Section five reads as follows: "Be it further enacted, that said mayor and trustees shall have power to have any of the streets of said town paved or macadamized, and the owers of property fronting on the streets so improved shall pay one-third of the cost of such improvement. The said mayor and trustees shall provide for an equitable assessment of the property fronting on the street so improved, and shall afterwards levy thereon and have collected such tax as will pay one-third of the cost of such improvement; provided, no such improvement shall be ordered until a majority of the legal

voters, who shall be liable for the one third of such improvement, shall at an election to be holden for the purpose of ascertaining their wishes, decide in favor of such improvement. That it shall not be incumbent on said mayor and trustees to make such improvement the entire length of the street, but it shall not be less than the length of one block or square."

By acts of acts of 1860, p. 59, the title of the corporation was changed to the "City of Shreveport.

Act No. 146 of 1866, p. 276, simply authorizes the city to own real estate outside of the corporate limits.

CITY ORDINANCE OF JUNE 3, 1869.

"In order to meet the demands of the city, and to provide the means of making such permanent improvements upon its streets and wharf, etc., as its growth and the increase of its population and trade seems at this time to require, therefore:"

"Section 1. Be it ordained by the mayor and board of trustees of this city in legal assembly convened, that there shall be issued as soon as practicable, bonds of the City of Shreveport to the amount of two hundred thousand dollars, bearing interest at the rate of eight per cent per annum, payable semi-annually. The said bonds shall be two hundred in number; shall be for the sum of one thousand dollars each, payable at the controller's

office in the City of Shreveport, ten years after date thereof, and shall be signed by the mayor and controller of the city, and approved by the finance committee of this board."

"Coupons for the amount of the semi-annual interest upon each bond shall be attached thereto, one payable every six months after the date of said bond until the principal becomes due, said coupon to be payable at the Bank of New York: Provided, that the holder of any coupon, when it becomes due, shall have the right to collect the said coupon in the City of Shreveport, at its par value, either at the contoller's office or at such place of deposit in said city, as shall be designated by the proper authorities."

"Sec. 2. Be it further ordained, etc., that as soon as said bonds shall be properly executed and issued in conformity with the foregoing section, they shall be put into the market in this city and elsewhere for sale, and in order to effect their sale with as little delay as practicable, the finance committee shall have power to employ one or more commissioners and enter into contract with such commissioner or commissioners to make the sale of said bonds, stipulating the minimum price for which said bonds shall be sold; the compensation which said commissioner or commissioners shall receive and such other matters of agreement as may be necessary and ex-

pedient to effect the the sale of said bonds upon the most advantageous terms to the city, provided that the said bonds shall not be sold for less than eighty cents on the dollar, and that the said contract when made by the finance committee shall not be binding upon the city until the same shall be submitted to, and approved by tho board of trustees."

"Sec. 3. Be it further ordained, etc., that the finance committee be, and are hereby, directed to have engraved and printed two hundred bonds, with the requisite number of coupons attached, in conformity with the foregoing sections of this ordinance; that the form of said bond shall be prepared by them and that they shall designate suitable vignettes and mottoes to be engraved upon their face."

"Sec. 4. Be it further ordained, etc., that in order to fully provide for the payment of the principal and interest of said bonds, as this board is required to do by law, there shall be set apart from the revenues of this city, semi-annually the sum of eight thousand dollars to meet the payment of the interest upon said bonds as the same become due, and to meet the payment of the principal of said bonds there shall be set set apart from the said revenues the sum of twenty thousand dollars annually as a sinking fund. And in order to raise the amount of interest as the same becomes due, and the amount neces-

sary to create the said sinking fund, it shall be the duty of the mayor and trustees of the city to levy annually upon all taxable property in the City of Shreveport, such an amount of tax as shall fully provide for the payment of said interest, and the creation said sinking fund, in addition to the payment of the current and ordinary expenses of the city government." Adopted."

No. 1124

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1887.

City of Shreveport, Plaintiff in Error, vs. John R. Holmes, No.

" " " " " John B. Crooks, No.

" " " " " E. H. Carter, No.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

A. H. LEONARD,
LAND & LAND,
Of Counsel for Defendants in Error.

M. F. Dunn & Bro., Stationers and Printers, 70 Camp Street, N. O.

SUPREME COURT OF THE UNITED STATES

City of Shreveport, Plaintiff in Error, vs. John R. Holmes, No.
" " " " " John B. Crooks, No.
" " " " " E. H. Carter, No.

Error to Circuit Court, Western District of Louisiana.

BRIEF AND ARGUMENT OF COUNSEL FOR DEFENDANTS IN ERROR.

N. B.—The issues involved in case vs. Holmes are also involved in the other two cases, and for convenience the argument as to these three cases will be made in one brief.

The Crooks case and the Carter case, *in addition* to the questions presented in the Holmes case, raise issues as to the indebtedness of the City for the purchase price of real estate, which are separately discussed.

For Crooks case, see this brief, p. 42
For Carter " " " " p. 44

CITY OF SHREVEPORT, PLAINTIFF IN ERROR

versus

JOHN R. HOLMES.

SYLLABUS.

A municipal corporation possesses such powers as are expressly granted by its charters and also such as result therefrom by necessary or rational implication.

The City of Shreveport was expressly invested by its charter with power to give bonds, notes and

other obligations binding on the city; to acquire any property, real or personal, and to make any transaction or compromise with regard thereto, to enact any ordinances not inconsistent with the Constitution and laws of the State and of the United States, in relation to its landings, streets, alleys and highways, and to the opening, widening draining, filling up, keeping in order and improving same, and to levy an unlimited tax.

A municipal corporation possessing such ample powers, had both expressly and by necessary implication, authority to enact ordinances providing for the improvement of its streets, etc.; to incur a lawful indebtedness therefor, and to issue its bonds in evidence of such indebtedness.

The City of Shreveport provided for the improvements of its streets, etc., and for the payment of the indebtedness to be thereby incurred, by legal ordinances under which it entered into contracts with certain persons who were to do certain public work on the streets, etc., for a stipulated price, a part of which was to be paid in cash when the work was done, and for the balance the city, in evidence of its indebtedness, was to give to the contractors its ten year coupon bonds. This work was satisfactorily done, was received by the city, enured to its benefit and in evidence of its indebtedness, the city gave to the contractors certain bonds, now held by defendant in error, who acquired *bona fide* for value and before maturity. These ordinances and the contracts made thereunder were in furtherance of corporate purposes and for the indebtedness therefrom resulting, the corporate authorities had power to give the bond or note of the city.

A municipal corporation legally indebted may give a bond for its indebtedness.

The power to contract a debt carries with it the power to give an evidence of the debt, by bill, bond, note or other instrument.

Authority to buy carries with it power to give bonds or notes for the price.

When a corporation has power, under any circumstances, to issue negotiable securities, the *bona fide* holder has the right to presume that they were issued under the circumstances which gave the requisite authority, and they are no more liable to be impeached for any informality in the hands of such holder than any commercial paper.

The liability of defendant was expressly recognized and fixed by the new charter granted to the City of Shreveport, A. D. 1871, which provided that all indebtedness or liabilities of the old corporation, whether in the form of bonds, notes, interest, coupons, cash warrants, or any other species of obligations whatever, shall be assumed and paid by the new corporation.

The Legislature may, by subsequent act, validate and confirm previous acts of a municipal corporation otherwise invalid.

Assuming the bonds were invalid, they still represented an equitable claim against the city. They were issued for work done in its interest, of a nature which the city required for the convenience of its citizens and which its charter authorized. It was therefore competent for the Legislature to impose the payment of the claim upon the city.

The provisions of Section 2448, R. S. Louisiana, do not apply to a debt which the Legislature has directed a corporation to pay.

The provisions of Section 2448 were, moreover, complied with; ample provison was made for payment by the ordinance creating the debt.

Corporations are not exempt from the ordinary principles of fair dealing that apply between man and man.

If a corporation has entered into a contract which has been fully executed on the other part and nothing remains but the payment by the corpora-

tion of the consideration, it will not be allowed to set up that the transaction was *ultra vires*.

A corporation cannot retain property acquired under a transaction *ultra vires* and at the same time repudiate its obligations under the same transaction.

The city urges no defence other than *ultra vires*, and does not pretend to have any equitable defence. Such being the case, the bonds, even though not held to be commercial paper, are good as the evidences of the indebtedness of the city for work done on its streets which enured to its benefit.

Municipal corporations have power to incur indebtedness for municipal purposes and to issue evidences of such indebtedness in any form which are valid as acknowledgments of indebtedness, may be transferred from hand to hand and must be paid to any holder, unless some equitable defence be alleged and established.

The law compels all corporations to pay all obligations regardless of form which have a just and lawful consideration.

Art. 209 of the Constitution of Louisiana of 1879, so far as same imposes a limit on municipal taxation, impairs the obligation of the contracts sued on, and is, therefore, null and void.

The Case stated by Counsel for Pltff in Error, is not the case - the facts of the case not found by Judge a jury see the brief for Pltff in Error. Counsel cannot substitute their statement of facts for that found in Court a jury. In their statement of the case & throughout their brief Counsel for Pltff in Error state facts not found by the

Statement of the Case.

The defendant in error instituted in the State Court of Louisiana for the Parish of Caddo four suits against the City of Shreveport, which were duly removed to the Circuit Court of the United States for the Western District of Louisiana, and there consolidated.

He alleges the city is indebted for work done and improvements made on its streets, wharves and avenues under contract.

PETITION.

John R. Holmes, a citizen of the State of Texas, avers that the City of Shreveport, a municipal corporation, and a citizen of the State of Louisiana, is indebted to him in the sum of ten thousand dollars, with interest from October 1st, 1869, for this, viz.: In the years 1869 and 1870 the city, in order to make improvements on its streets, wharves, etc., through its Council, enacted ordinances providing for the issuance of 200 bonds of said city, each for the sum of $1000, bearing interest at the rate of eight per cent. per annum, payable to bearer ten years after date; for levying and collecting annually a tax sufficient to pay the interest on said bonds, and to create a sinking fund out of which to pay them as they matured, and providing also for the improvement of the wharf and several streets, etc., of the city. That under these ordinances the city entered into contracts with several contractors to have said improvements made for a stipulated price; that the improvements so contracted for were made by the contractors, were accepted by the city, enured greatly to its benefit, and were well worth the amount which the city had agreed to pay therefor; that thereupon the city, in evidence of its indebtedness for the work and improvements so done and made, issued to said contractors a number of said bonds, among others those bearing numbers , which were by said contractors transferred before maturity for value and acquired by plaintiff (the defendant in error in this Court); that for several years the city paid to any holder the interest coupons on said bonds, and by many ordinances repeatedly recognized its liability; that all the ordinances and contracts of the city hereinbefore referred to were legally and prop-

Judge a quo and which vary from his Statement of facts -

erly enacted and entered into after full compliance with all the requirements of law.

That the obligation of the city to pay its said indebtedness was confirmed and fixed by the charter of said city, granted by the State of Louisiana, A. D. 1871 and 1878.

That the city has failed and refused to pay its indebtedness evidenced by said bonds, and remains indebted for the work done by said contractors, and that he, petitioner, is subrogated to all the rights and actions of said contractors against said city.

That the laws of the State of Louisiana, so far as same had any bearing on or relation to the contracts hereinbefore set up, and to the rights and obligations therefrom resulting, were by implication and operation of law a part of said contracts, and there was an implied contract between the city and the contractors that, in event of a failure on the part of the city to comply with the terms of said contract, the obligations thereof might be judicially enforced through the means and by the remedies then existing.

That the law of Louisiana at the date of said contracts provided sufficient means and adequate remedy for the enforcement of all rights thereunder arising, but that Article 209 of the Constitution of Louisiana, adopted July 23d, 1879, has impaired the obligation of said contracts by destroying all remedies for the enforcement of the same in this, viz.: by limiting municipal taxation throughout said State for all purposes whatever to ten mills on the dollar of valuation.

That it is claimed by the city that the entire revenues of the city, under the operation of said constitutional limitation, are not more than sufficient for its alimony, and petitioner avers that in consequence of such limitation, no means exist under the law of Lou-

isiana by which said city can raise funds wherewith to pay or be compelled to pay its just debts. That said Article 209, so far as it limits municipal taxation, is as to him null and void, because it violates the Constitution of the United States, which prohibits all States from passing any law impairing the obligation of contracts.

And that he is entitled to have said Article 209 declared null and void, so that he may have a remedy by means of which to compel said city to pay its indebtedness to him.

He prays that said city be cited and for judgment against said city, declaring said Article 209 unconstitutional, null and void, and condemning said city to pay him the sum and interest by him claimed and costs, and for all orders and decrees necessary, and for general relief in the premises.

PLEA OF PRESCRIPTION

The city interposed a plea of prescription, which was overruled, and an

ANSWER,

in which the city denies generally all the allegations of plaintiff's petition; denies specially that the city had any right or power to issue bonds, and avers their issuance by the City Council was unwarranted; that the bonds are void, because the provisions of Section 2448, Revised Statutes of Louisiana, were not complied with, and finally the city denies any privity between plaintiff and the contractors, who are alleged to have performed work under contracts with the city, and avers plaintiff, being no party to such contracts, has no right of action against the city for work or labor performed by others.

A Stipulation

was entered into by which jury was waived and the case tried by the Court.

Evidence.

No evidence was offered on behalf of the city, and no objection made to the evidence adduced against it.

The Statement of Facts

found by the Judge *a quo* is as follows:

John R. Holmes } Nos. 104, 105, 106 and 107.
versus } In the U. S. Circuit Court,
City of Shreveport. } Western District of Louisiana.

By written agreement of counsel, these four suits were consolidated, Jury was waived and motion for recusation abandoned and dismissed. *The defendant offered no evidence.*

Statement of Facts on Plea of Prescription.

Prescription as against plaintiffs was interrupted by a judicial demand and citation on August 30, 1884, and prescription has not accrued.

Statement of Facts on Merits.

Defendant is a municipal corporation. In 1869 and 1870, in pursuance of ordinances legally enacted and promulgated, the defendant caused to be let several contracts for public works, such as grading and otherwise improving the streets and wharves of the city. By written agreement, the contractors undertaking the public works, which were provided for in these ordinances, were to receive from defendants for the amount due them for work, labor done and material furnished, a part in cash and the balance in the ten year coupon one thousand dollar bonds of the city *at par*.

The works having been satisfactorily performed and accepted by the city, a number of such bonds were executed and given to said contractors to evidence the amounts due them, in accordance with the agreement of the parties. *The defendant corporation has had the benefit and enjoyment of the works and the credit price represented and evidenced by these bonds, has never been paid to any one.* The several contractors to whom these bonds were given, transferred them by delivery before maturity, for value, and plaintiff acquired and became the holder of ten of said bonds, for value, and in due course of business. Up to and including the year 1877, the city levied, annually, a tax to provide means for paying the interest, and also to provide a sinking fund for the payment of the principal of said bonds, and the interest up to that time was paid to anyone holding them. Up to and including said year 1877, the bonds were also annually placed in the city's statement of liabilities and on its published budgets, and some of said bonds were taken up by the city. The defendant corporation issued in the year 1866, bonds for $500 each, payable in five, ten and fifteen years, and same were placed in annual statements and in the published budgets. The following is a copy of the bonds given to said contractors and now held by plaintiff:

$1000.00 $1000.00

STATE OF LOUISIANA, CITY OF SHREVEPORT.

Municipal Loan for Improvement and Extension of the Avenues of Trade, and Other Purposes.

Know all men by these presents, That the Mayor and Trustees of the City of Shreveport acknowledge to owe —— or bearer, one thousand dollars, lawful money of the United

States, which the said Mayor and Trustees promise to pay at the Comptroller's office, in the City of Shreveport, on the 1st day of October, 1879, with interest thereon at eight per cent. per annum, payable semi-annually at the Bank of New York, in the City of New York, on presentation of the coupons hereto attached.

For the performance of this obligation the faith and property of the corporation of Shreveport are irrevocably pledged, and a tax is ordered to be levied on all the taxable property of said city, annually, to pay the said interest and to create a sinking fund to pay the principal when the same becomes due. This bond is issued in obedience to an ordinance of the Mayor and Trustees of said city, adopted on the 3d day of June, A. D. 1869, for the purpose of raising means to make such improvements as the growth of the city demands. In witness whereof, this bond is signed by the Mayor and Comptroller of said City of Shreveport, and approved by the Finance Committee, and the seal of the city affixed, this 1st day of October, A. D. 1869.

Approved:

Thos. H. Morris,
J. C. Moncure,
J. N. Howell,
Finance Committee.

J. B. Gilmore,
Mayor,
C. H. Spilker,
Comptroller.

On the back of bond is following endorsement:

Bond of the City of Shreveport, No. —, $1000.00, payable October 1st, 1879, interest at eight per cent. per annum, payable at the Bank of New York, in the City of New York, April and October.

This bond is one of 200 of like denomination, and the ordinance under which they are issued provides for their payment as well as the payment of interest, as required by law, by setting apart from the revenues of the city the sum of thirty-six thousand dollars annually, to pay said interest

punctually, and to create a sinking fund to pay the principal. The ordinance providing for the payment of the principal and interest of this bond is irrevocable until the same is fully paid. The ordinance providing for the interest and principal of any debt created by any board of police or authorities of municipal towns and cities, shall remain in binding force until the debt and interest is paid. Acts of the State of Louisiana, Session of 1855, *Section* 5, *page* 326.

Under an ordinance of June 3d, 1869, the series of bonds of which the ten bonds held by plaintiff are a part, were issued. The following is section 4 of that ordinance:

Be it further enacted, etc., That in order to fully provide for the payment of the principal and interest of said bonds, as the board is required to do by law, there shall be set apart from the revenues of the city, semi-annually, the sum of eight thousand dollars, to meet the payment of the interest upon said bonds as the same becomes due. And to meet the payment of the principal of said bonds there shall be set apart from the said revenues the sum of twenty thousand dollars, annually, as a sinking fund. And in order to raise the amount of interest as the same becomes due, and the amount necessary to create said sinking fund, it shall be the duty of the Mayor and Trustees of the City of Shreveport to levy annually upon all taxable property in the City of Shreveport such amount of tax as shall fully provide for the payment of said interest and the creation of said sinking fund, in addition to the payment of the current and ordinary expenses of the city government.

The defendant corporation has no property subject to execution, and the revenues of the city under the limitation on municipal corporation taxation, imposed by Article 209 of the Constitution of Louisiana,

adopted A. D. 1879, are not more than sufficient for the alimony of the city. *The defendant corporation, at the time these bonds were given to the contractors, had power to levy and collect taxes on all property in the city without limit.*

The charter of defendant corporation, as it existed at the date hereinbefore stated, is found in several Acts of the Legislature of Louisiana, viz., Act No. 67, Session 1839, p. 200; Act No. 190, Session 1850, p. 123; Act No. 232, Session 1853, p. 198; Act No. 156, Session 1859, p. 120; Act No. 146, Session 1866, p.

Subsequently to said dates hereinbefore stated, and by an Act of the Legislature of Louisiana, approved April 27th, 1871, the territory previously known as Shreveport, together with other territory, was designated the City of Shreveport, and the inhabitants constituted a body politic by the name and style of the City of Shreveport, and invested with certain rights and privileges subject to certain duties and obligations, as shown by said Act.

ALECK BOARMAN,
Judge.

THE CHARTER OF SHREVEPORT,

As granted by the various acts mentioned in statement of facts, will be found in appendix.

ARGUMENT.

On the issues as raised by the pleadings and the facts so found, there was judgment against the city. The case has been brought to this Court by the city on writ of error, and by written agreement of parties is to be submitted on briefs to be filed within fifteen days after commencement of present (October, 1887) term. This brief must necessarily be prepared before any assignment of errors is filed by plaintiff in error,

but as no evidence was offered on behalf of the city, and as no bill of exceptions was taken, the learned counsel will doubtless suggest that on the facts, as found by the Judge *a quo*, his decision is contrary to law. The very able opinion of that Judge, to which this Court is respectfully referred, demonstrates, we think, the correctness of his judgment.

Plea of Prescription.

This plea we understand has been abandoned. At all events it was correctly overruled. The Judge *a quo* found as the facts, that prescription as against the defendant in error (Holmes, plaintiff in Court *a qua*) had been interrupted by a judicial demand and citation on the 30th August, 1884, and that prescription has not accrued.

Merits.

It is to be observed that the city does not suggest any defence other than *ultra vires*. Under the facts of this case, that defence, even if well founded, would not avail, as we will hereinafter show, but it is not well founded. The Judge *a quo* found that the city had power to do that which it did do, and made the various Acts of the Legislature of Louisiana constituting the charter of Shreveport part of his statement of facts by reference. See appendix.

The charter of Shreveport was originally granted in the year 1839 by legislative act, and was amended by acts passed in 1850, 1853, 1859 and 1866. These acts constituted the charter *existing at the time the contracts and bonds hereinbefore referred to were entered into and issued;* and at that time, as a result of the various amendments to original charter, the corporate powers of the city are found in Act 1853, Section 1, Appendix;

Act 1850, Sections 2, 3, 4, 5, 6, 7, 8, 11, Appendix; Act 1866, Appendix.

By these Acts, constituting the city charter, the Mayor and Trustees were invested with power to acquire, receive, hold, farm, lease and convey any property, real or personal, within and without the corporate limits, to make any compromise, arbitration or transaction in regard thereto, to erect public works and buildings for the use and benefit of the town, as may be found expedient, to *give bonds* and receive bonds, to give notes and other obligations binding on the city, and to levy and collect a tax (*unlimited* from 1853 until 1871) annually for the improvement, the comfort and the well regulating of the town. The Mayor was required to sign all notes and other obligations binding on the city. *The Mayor and Trustees were empowered* from time to time *to enact* and provide for the promulgation of such by-laws and *ordinances not inconsistent with the laws and Constitution of the State and of the United States, as they may deem proper in relation to the public markets of the town, to the landings, streets, alleys and highways thereon, and to the opening, widening, draining, filling up, keeping in order and improving same* (see Section 8, Act 1850, Appendix, p.), to open, extend, pave, plank, macadamize or otherwise improve and adorn the streets, alleys and wharves of the city, and generally to make all other rules and regulations for the government, improvement and police of the town.

As stated by the Supreme Court of Louisiana in the case of Reynolds vs. Shreveport, 13 An. 426, these are "powers of the most ample description." The Legislature clearly intended to enable and did enable the municipal government to provide for and to do in any manner, "not inconsistent with the laws or

Constitution of the State or the United States," whatever such government "may deem proper," with relation to landings, streets, alleys and highways, and to the opening, widening, draining, filling up, keeping in order and improving the same.

The corporation was expressly invested with power to give bonds, notes and other obligations binding on the city. Section 1, Act 1853, Appendix, p. , authorizes the Mayor and Trustees to give bonds and receive bonds, and by Section 4, Act 1850, Appendix, the Mayor is required to sign all notes or other obligations binding on the corporation, which necessarily implies the power of the corporation to execute notes and other obligations.

It was proved in this case, as appears from statement of facts found by Judge *a quo*, that in 1869 and 1870, the Mayor and Trustees, by ordinances legally enacted and promulgated, provided for the improvement of the streets, wharves, etc., of the city, and in pursuance thereof, and in the proper exercise of their powers, entered into contracts by which certain persons were to do certain public work on said streets, wharves, etc., for a stipulated price, payable partly in cash when work was done and partly on the 1st day of October, A. D. 1879, with interest, payable semi-annually. The work was satisfactorily done and received, and *in evidence* of the amount due the contractors the city gave them the obligations annexed to petition. These instruments are styled bonds. We have no objection to calling them bonds, but no matter what name may be given them, each instrument is an unconditional promise in writing to pay a certain sum of money to bearer on a date specified. These obligations are valid and binding on the city in the hands of the persons to whom they were originally

given, or of any person to whom they have been assigned, whether they be considered bonds, notes or evidences of indebtedness.

Plaintiff is holder, before maturity and for value; if the city had any equitable defence, it could not be urged against him, but the city does not pretend to have any such defence.

As we have shown, by reference to the charter, the Mayor and Trustees had express power to do that which they did do, but if such power had not been expressly given, it was given by necessary implication.

"Certain powers are incidental to corporations, "without being expressly empowered so to do, they "may enter into contracts to effectuate corporate pur- "poses." Cooley, Constitutional Limitations, Power of Public Corporations, p. 234.

"A municipal corporation, unless in some way re- "strained by its charter, has the same general powers "with other corporations to make contracts in further- "ance of the corporate objects. In the ordinary course "of its government it may make promissory notes, "bonds, guarantees and all other agreements neces- "sary for the proper financial management of its "affairs." Boone, Corporations, Sec. 289.

Express authority in the charter is not necessary to enable the City Council to make a contract in the course of their legitimate business. 8 Robinson La. 245; Angel & Ames, 145.

It is well settled that a corporation in the ordinary course of its business may make bonds, notes, mortgages and drafts, except when restrained by law. 21st Howard, 424.

If a city be legally indebted, it follows that the corporate authorities can give a bond for it. Seybert vs. City of Pittsburg, 1st Wall. 273, a case which it seems

to us must be held decisive in our favor in the case at bar. In the Seybert case it appears that the Legislature of Pennsylvania had authorized any incorporated city to subscribe to the stock of a certain railroad company, but the act did not give such cities any power to issue bonds in payment of their subscriptions.

The City of Pittsburg, however, having subscribed for several shares, issued its negotiable bonds therefor. This Court, affirming the Supreme Court of Pennsylvania, held that the power to create a debt carries with it the power to give an evidence of the debt.

"Grants of power to corporations are strictly con-
" strued in favor of the public, but it would be a per-
" version of the rule to permit a corporation to use it
" to defraud its creditors or protect itself against its
" own assumed obligations. If they legally owe a debt,
" it follows they can give a bond for it."

In case at bar, the City of Shreveport unquestionably had power to contract for the improvement of its streets, wharves, etc., and to incur an indebtedness therefor. Such being the case, the city had power to give its bonds in evidence of such indebtedness.

In case First Municipality of Orleans vs. McDonough, 2d Robinson La., p. 244, the plaintiff purchased from defendant certain real estate for $247,000, payable in bonds twenty-five years after their date, with six per cent. per annum interest, payable semi-annually. Subsequently, plaintiff instituted suit to annul this contract, because in the purchase of the property *and in issuing the bonds* in question, the members of the Council transcended the powers and authority delegated by the Acts of the Legislature.

The Supreme Court of Louisiana found that the Council had express power to purchase, and then say:
"If the power to purchase be established, the power to

" give the evidence necessary to secure the price neces-
" sarily ensues, and whether the credit be long or short,
" is a matter of indifference." 2d R., p. 250.

In case City of Shreveport vs. Flourney, 26 Annual, p. 709 (Louisiana), the Supreme Court held: Under its charter the City of Shreveport had express authority to buy property. Authority to buy carries with it by implication authority to give notes for the price. See also to same effect C. C. Edey et al. vs. City of Shreveport, 26 An., p. 636.

In case Williamsport vs. Commonwealth, 84 Pa. St., 487, 1877, the Supreme Court of Pennsylvania held: " Where a municipal corporation has lawfully con-
" tracted a debt, it has the implied power, unless re-
" stricted by its charter or prohibited by statute, to
" evidence the same by a bill, bond, note or other in-
" strument. The power to contract a debt carries with
" it, by necessary implication, the right to give an
" appropriate acknowledgment of such debt and to
" agree with the creditor as to the time and mode of
" payment." This decision was not concurred in by three judges, but these dissenting judges conceded that if an authorized debt is *actually incurred for paving or other proper purposes*, a municipality has the right to issue a bond or note as evidence of it.

In case Desmond vs. City of Jefferson, U. S. Circuit Court, W. D. Texas, 19 Fed'l Reporter, 483, the Court say: " The charter of the City of Jefferson confers the
" usual powers, such as contracting and being con-
" tracted with. It gives power to organize a fire de-
" partment and to regulate same, and to pass such
" other laws as may be deemed necessary for the pre-
" vention and extinguishment of fires.

" If there were no other grant of power, it would
" seem that it must be held from this that the right to

" purchase the engine was clearly granted, if not by " specific grant, by necessary implication. But this " is not all the power vested in the city by its charter. " It may *do such other acts and pass such other ordi-* " *nances not inconsistent with the Constitution and laws* " *of this State or of the United States, as may conduce to* " *the interest and welfare of the city.* This is a very " large grant of power. Can any one doubt that under " this authority, the City of Jefferson had the right to " issue these bonds? *There is no case to be found* where, " if the power is given by specific grant or by neces- " sary implication, the courts have held that this char- " acter of paper is not obligatory upon the munici- " pality."

Under the charter of Shreveport, the mayor and trustees had express power to enact such ordinances not inconsistent with the laws and Constitution of the State and of the United States as they may deem proper in relation to the landings, streets, alleys and highways of the town, and to the opening, widening, draining, filling up, keeping in order and improving same; and from the passage of Act of 1853 (see appendix, p. ,) down to the new charter granted in 1871 (that is to say, during the period covering dates when contract and bonds at issue in this cause were entered into and issued) the power of the city to tax was *unlimited.* A municipality expressly invested with these extraordinary powers certainly had power, both express and necessarily implied, to enact ordinances providing for the improvement of its streets, wharves, etc., to incur a lawful indebtedness for such purpose, and to give its bonds and notes in evidence of such indebtedness, which, in the hands of innocent third persons acquiring before maturity and for value, are protected by the law merchant.

In this connection we refer to Gelpcke vs. Dubuque, 1st Wall. 203, in which Mr. Justice Swayne lays down this rule: "When a corporation has power under any "circumstances to issue negotiable securities, the *bona* "*fide* holder has a right to presume that they were "issued under the circumstances which give the requi- "site authority, and they are no more liable to be im- "peached for any infirmity in the hands of such "holder than any commercial paper." See also Lexington vs. Butler, 14 Wall. 282.

As against the overwhelming weight of the authorities herein cited, the learned counsel for the city oppose the decision rendered by the Supreme Court of Louisiana in case of J. D. Wilson vs. City of Shreveport, in which counsel claim "bonds similar to those sued on "here were held to be null and void, even in the hands "of a *bona fide* holder, because the city was without "power to issue any class of bonds whatsoever."

In their brief, filed in Court *a qua*, counsel say: "It "would be a waste of time for us to add anything by "way of argument to the force and effect of that deci- "sion." From which we infer that economical considerations alone restrained our very able brothers from adding "force and effect" to that decision, and apparently led them to assume that it is conclusive in their favor.

An analysis of the Wilson case will show that it differs widely from the case at bar; and that it *decides* nothing which can be properly construed to determine in favor of the city the questions involved in this cause.

The syllabus of the Wilson case, as found in Reports, 29 An. 673, prepared, presumably, by the Supreme Court, or which at least was approved by them, shows the points decided in that case. It is as follows:

"1st. The officers of a municipal corporation can-
"not create obligations binding on the corporation
"unless their power to do so is express, or necessarily
"or rationally implied by the powers that are expressly
"granted to them in the charter of the corporation, or
"is essential to the objects for which the corporation
"was created.

"2d. The power granted by the charter of a cor-
"poration to give such bonds as might be necessary
"in the conduct of its litigation, or in the current
"administration of its affairs, does not authorize the
"issue of bonds *for raising money.*

"3d. A negotiable form will not impart validity,
"even in the hands of a *bona fide* holder, for value of
"an obligation of a corporation which it had not
"power to contract.

"4th. The officers of a municipal corporation can
"create no debt against the corportion unless the ordi-
"nance creating the debt imposes a tax for its extin-
"guishment."

We may concede the correctness of these propositions without detriment to our cause.

1. In case at bar, the power of the corporation to create obligations sued on was, as we contend, express; it was certainly *necessarily* and *rationally* implied by the powers expressly granted, and it was *essential* to the objects for which the corporation was created.

2. Granting for the sake of the argument that the corporation had no power to issue bonds *for raising money*, it could issue bonds as an evidence of an indebtedness lawfully incurred.

3. Granting that a negotiable form will not impart validity even in the hands of a *bona fide* holder of an obligation of a corporation which it had not power to contract, the statement implies that an obligation

which the corporation had power to contract will be valid in a negotiable form in the hands of a *bona fide* holder.

4. We will show conclusively, when we reach that point, that ample provision was made for the payment of debt sued on at time it was contracted.

The facts in Wilson case are not those found in this case. The bonds in the two cases are not similar, except so far as mere form is concerned. The bonds in Wilson case were issued under an ordinance of July 3d, 1866, providing for the issuance *and sale*, for not less than ninety cents on the dollar, of one hundred and fifty thousand dollars of bonds, of $500 each.

The bonds in case at bar were not issued for the purpose of *raising money*. From statement of facts as found by Judge *a quo*, they were issued in pursuance of ordinances legally enacted, under which the corporation let several contracts for grading and otherwise improving its wharves and streets, and by which the contractors were to receive, for the work done by them, part cash and part in ten year coupon bonds of city, at par.

The bonds in the Wilson case were given by the corporation for the purchase price of stock in a gas company, and in that case the Supreme Court were of opinion that the corporate authorities had no power to purchase gas stock, no such power being expressly given, and as the Court say: "the lighting of the "streets did not make it necessary for the corporation "to become a stockholder in the gas company."

The bonds in case at bar were given to contractors to evidence the unpaid amount due them for work done on the streets, wharves, etc., of the city, under contracts which the corporation had, expressly and by necessary implication, power to make and enter into.

In the Wilson case, it appears from the decision of the Supreme Court, that the ordinance creating the debt made no provision for its payment. *This was really the ground on which that decision was based.*

In case at bar the corporation, when it created the indebtedness sued on, made ample provision for its payment, as appears from statement of facts found by Judge *a quo*, as we will show when we reach that point.

In the Wilson case, the Supreme Court had no occasion to consider or pass upon the effect of Section 8, Act 1850, appendix p. —, which invested the Mayor and Trustees with power to enact such ordinances not inconsistent with the Constitution and laws of the State, and of the United States, as they may deem proper, in relation to the streets, alleys, etc., and to the opening, improving. etc., etc., of same. This Section had no application in the Wilson case, since it gave no authority to pass ordinances relating to the purchase of gas stock, but it has application to the case at bar, since it gave power to enact such ordinances as may be deemed proper relating to streets, wharves, etc.

There is nothing in the Wilson case which justifies the belief, that the court by which it was decided would decide this cause in favor of the city. We conclude with the learned Judge *a quo*, that "a careful "consideration of that case does not appear to avail "anything for the defence."

Furthermore, even though the decision in the Wilson case, had the force and effect which the counsel for the city erroneously assume it to have, it would not conclude this Court. That decision was not rendered until 1877. The bonds in question in case at bar were issued in 1869 and 1870. When the bonds came into

the hands of the defendant in error, the Wilson suit had not been filed. The interest was regularly paid on them to any holder until 1878; they were placed in the annual budgets published by the city. A tax was annually, until 1878, levied and collected to pay the interest, and to provide a sinking fund for the payment of the principal, and some bonds were paid in full.

As stated by the Judge *a quo*, when the bonds came in the hands of the plaintiff (Holmes), "there was "nothing known in the history of their origin, issue, "or treatment by the city to depreciate them, or in "any way dishonor them in public confidence or in "commerce."

We understand that the Supreme Court of the United States, in municipal bond cases, does not hold itself concluded by decisions of the State courts, made after the bonds have been negotiated.

Dillon, Municipal Corporations, 3d Edition, § 517, says: "It seems quite clearly to be the doctrine of the "United States Supreme Court upon this subject, that "it is not *concluded* by the decisions of the State "courts in *any case* where they are made after the "bonds are issued and have been sold in the market." And as the learned author somewhat reluctantly is compelled to admit, the course of the Supreme Court of the United States in that respect, "has had the approval of the profession in general, and of the public."

Effect of New Charter Confirming Obligation of City.

The indebtedness of the city, as alleged, cannot be successfully denied by the present corporation; its liability was fixed beyond question by the charter granted

A. D. 1871. Prior thereto the Town of Shreveport comprised only six hundred and forty acres of land, known as the Larkin-Edwards reservation. In 1871 that reservation, together with a much larger area, was, with the inhabitants thereof, constituted the City of Shreveport by an Act of the Legislature of Louisiana.

Sec. 21, § 3 of that Act, invested in the *new corporation* all the right, title and interest of *the old corporation* to all lands, tenements, hereditaments, bridges, fences, streets, roads, wharves, markets, stalls, levees and landing places, buildings and other property of whatever description and wherever situated, and all goods, chattels, moneys, effects, debts, dues, demands, bonds, obligations, judgments, liens, actions and rights of action, books, accounts and vouchers, *subject to this proviso*, that all indebtedness or liabilities of the *old* corporation, whether in the form of *bonds, notes, interest coupons, cash, warrants*, or any other species of obligations whatever, shall be assumed *and paid* by the new corporation.

The indebtedness of the city, as alleged, was, as appears from facts proved, as found by Judge *a quo*, acknowledged by the city anterior to and at the time of the passage of Act of 1871. It appeared upon the books of the city as an outstanding indebtedness; it appeared as such in the annual budgets published by the city. The city levied and collected taxes to pay the interest, and to create a sinking fund for payment of the principal, and the books of the city showed payments on account of such indebtedness.

The present corporation, created by Act of 1871, was by that Act invested with certain rights and subjected to certain obligations, among others the obligation to pay the debt due to plaintiff.

The action of the mayor and trustees in creating the

indebtedness alleged was, as we think we have shown, valid and binding on the city; but if such had not been the case, the charter of 1871 made that action valid.

The Act of 1871 is a legislative interpretation that the corporation had power to issue bonds, notes and interest coupons, which is entitled to much weight in considering the question whether or not the corporation originally had such power; but even in the absence of such power the Legislature could in effect grant it *ab initio* by subsequent Statute.

With reference to the extent of legislative control over municipal corporations, Dillon says: "The Leg- "islature may, by subsequent act, validate and con- "firm previous acts of the corporation otherwise in- "valid." Dillon, Municipal Corporations, 3d Edition, § 79.

"The fact that a claim against a municipal corpora- "tion is not such an one as the law recognizes as of "*legal obligation*, has often been decided by Courts of "the highest respectability and learning to form no "constitutional objection to the validity of a law "directing its payment." *Ibid*, §75.

In case New Orleans vs. Clark, 95 U. S. 644, this Court, through Mr. Justice Field, held: "Assuming "the bonds were invalid, they still represented an "equitable claim against the city, They were issued "for work done in its interest of a nature which the "the city required for the convenience of its citizens, "and which its charter authorized. It was, therefore, "competent for the Legislature to interfere and impose "the payment of the claim upon the city." * * *

The Legislature may "direct a corporation to assume "and pay a claim not legally binding for want of some "formality in its creation, but for which the corpora- "tion has received an equivalent."

In same case the Court held, that the Constitution of Louisiana does not forbid such legislation. See also People ex rel. Blanding vs. Burr, 13 Cal. 343; Guilford vs. Supervisors, 18 Barb. 615; 13 S. C. N. Y. 143; Cooley's Const. Lim. 371-379; 2 Robinson La. 209; 23 An. La. 5.

PROVISION FOR PAYMENT OF DEBT.

The objection that the provisions of Section 2448, Revised Statutes of Louisiana, were not complied with, is without force. That Section is as follows: "The "constituted authorities of incorporated towns and "cities in this State shall not hereafter have power to "contract any debt or pecuniary liability without fully "providing in the ordinance creating the debt the "means of paying the principal and interest of the "debt so contracted."

So far as the debt at issue in this cause is concerned, ample provision was made for its payment by the ordinance creating it. The Judge *a quo* so found, and correctly, as is proved by Section 4 of that ordinance, which he incorporates in his finding of facts. See statement of facts.

This ordinance provided for setting apart from the revenues of the city semi-annually the sum of $8000 to meet the interest, and annually the sum of $20,000 as a sinking fund, with which to redeem the bonds at maturity, and further provided for levying and collecting annually upon all taxable property in the city "such an amount of tax as shall fully provide for the "payment of said interest and the creation of said "sinking fund *in addition to the payment of the current "and ordinary expenses of the city government.*" When it is remembered that at the time this ordinance was enacted and debt sued on created, the power of

the city to tax was *unlimited*, it cannot be reasonably asserted that the ordinance creating the debt did not provide for its payment; no better provision for payment could possibly have been made, and for a period of nine years a tax was levied and collected by the city under this ordinance without any objection on the part of the taxpayers or any one else. The requirements of Section 2448 were complied with.

In case Oubre vs. Town of Donaldsonville, 33 La. Annual, 386, defendant sued on bonds, insisted they were void, because the provisions of Section 2448 R. S. had not been complied with. It appeared that the only ordinance providing for payment of debt at issue in that case, was as follows: "That an annual tax of "one thousand dollars be levied on all real estate of "the Corporation of Donaldsonville, and that the same "be set aside to form a sinking fund to pay consoli- "dated debt." The Supreme Court of Louisiana held this ordinance was sufficient to satisfy the requirements of the Statute, and rendered judgment in favor of plaintiff. This is the latest decision of that Court on this subject, and is conclusive in our favor.

Counsel for the city, on this point refer again to case Wilson vs. Shreveport, 29 An. 673. If the Wilson case sustained the defence, it would be a sufficient answer to say, that it has been overruled by the later case, Oubre vs. Donaldsonville, by us cited. But the Wilson case decided nothing whatever with reference to the provision made for payment of debt sued on in case at bar. The debt at issue here, and the provision made for its payment, were not before the court in the Wilson case in any manner whatsoever. In the Wilson case the Court held, that the ordinance of the city of July 3d, 1866, providing for the issue, to the extent of $150,000, of bonds of $500 each, redeemable in five,

ten and fifteen years, bearing interest payable annually, did not make sufficient provision for the payment of the bonds and interest. The Court say: "The second "section of the ordinance set apart ten thousand dol- "lars a year from the revenues derived from the wharf "as a sinking fund, but the Mayor and Trustees "within a week after its passage, repealed this section, "*and without levying any new or additional tax*, set "aside ten thousand dollars out of the taxes of each "year as a sinking fund. The bonds were for $150,000, "on which the interest, at eight per cent., would be "$12,000, so that it would have required $22,000 to "pay the interest and to provide for the redemption "of $10,000 of the bonds the first year."

Conceding that this ordinance made no sufficient provision for the payment of the debt, a decision to that effect cannot possibly have any application to the ordinance in question in case at bar, since the two ordinances differ widely and essentially.

In case at bar the ordinance provided for levying and collecting annually (*in addition* to the tax levied for the payment of the current and ordinary expenses of the city government) a tax on all taxable property in the city in an amount sufficient to provide fully for the payment of $16,000 interest, and for the sum of $20,000, to be placed, each year, in the sinking fund, out of which the bonds were to be paid at maturity.

In the Wilson case, the Supreme Court say: "The "Mayor and Trustees, without levying any new or ad- "ditional tax, set aside ten thousand dollars out of the "taxes of each year as a sinking fund."

In the case at bar the ordinance appropriated $36,000 annually, not out of the taxes of each year, but out of a tax to be levied "*in addition* to the tax levied for

" the payment of current and ordinary expenses of the " city government."

In their brief filed in Court *a qua*, the learned counsel for the city say: "The ordinance creating the " debt must provide for its payment, by either appro- " priating out of cash on hand the money to pay it, " or by levying a tax of a certain rate per centum " upon the value of all its taxable property, to be paid " annually." This proposition concedes that the ordinance in question makes proper provision for the payment of the debt.

What is the difference, so far as providing for the payment of a debt is concerned, between levying a tax on all taxable property, at a stated rate per cent. sufficient to raise $36,000, and levying on all taxable property such an amount of tax as will realize $36,000?

In other words, assuming all taxable property to be of the value of $3,600,000, what is the difference between levying thereon a tax of one per cent. and levying thereon such an amount of tax as will produce $36,000? None whatever, in any essential particular; absolutely none in the result.

The city authorities very wisely preferred not to fix any rate per cent., because Shereveport was rapidly increasing in commercial importance and population, and the value of its taxable property increased from year to year. A fixed rate of, say, one per cent. would have produced, as value of property increased, a much larger amount than was necessary; therefore, the ordinance provided for the levying a tax each year on all taxable property, in such amount as would realize $36,000, the amount required to pay the interest, and create the fund out of which to pay the bonds when they matured.

Finally, so far as this defence is concerned, Section 2448, R. S., is not applicable in case at bar, because, as we have hereinbefore shown, the Legislature of Louisiana, by the new charter granted in 1871 to the City of Shreveport, directed the new corporation to assume and pay the indebtedness of the old corporation, whether in the form of bonds, notes, interest coupons, etc. In the case of New Orleans vs. Clark, 95 U. S. 644, this Court held, that the Legislature of Louisiana had power to direct a municipal corporation, to assume and pay claims just in themselves, for which an equivalent had been received, even though no provision had been made for the payment of the debt at the time it was created. In that case the Court say: "The power of taxation, which the Legislature of a "State possesses, may be exercised to any extent upon "property within its jurisdiction, except as restrained "by its own or the Federal Constitution, and its power "of appropriation of the moneys raised is equally "unlimited. * * * The power which it may thus "exercise over the revenues of the State it may exer- "cise over the revenues of a city. * * * A city is "only a political subdivision of the State; it is an in- "strumentality, with powers more or less enlarged, and "which may be increased or repealed at the will of "the Legislature. In directing, therefore, a particular "tax by such corporation, and the appropriation of "the proceeds to some municipal purpose, the Legis- "lature only exercises a power through its subordinate "agent which it could exercise directly, and it does "this only in another way when it directs such cor- "poration to assume and pay a particular claim not "legally binding for want of some formality in its "creation, but for which the corporation has received "an equivalent."

ESTOPPEL.

The facts of this case are not disputed. The city does not even suggest any equitable defence.

The present Council, as the only defence against plaintiff's action, allege that the city was without authority to issue bonds. The fact that improvements were made on the streets of the city of great public utility is not denied, but the present city administration say the city is under no obligation to pay therefor, because a previous administration gave to the contractors who made those improvements acknowledgments of indebtedness in the form of bonds, which are alleged to be worthless paper. The city says in effect: We have had and have the benefit of improvements on our streets and wharves essential to our welfare, made at great expense to them by persons who contracted in good faith with the city, but we will not pay anything for those improvements. Such a defence is certainly not entitled to any favor. It is unfair, inequitable and unjust. No member of the City Council would make such a defence for himself. The action of that body in this case has added another to the constantly recurring examples of the fact, that under the shield of their corporate character men daily do acts which they would never do as individuals. "It is a familiar fact," says Herbert Spencer, "that the corporate conscience is ever inferior to the "individual conscience; that a body of men will com- "mit as a joint act that which every individual would "shrink from did he feel personally responsible."

But this defence cannot prevail.

Municipal corporations may claim *jura minorum*, but even minors, who are wards of the Court, and regarded with special favor by the law, are not permitted

to disregard the obligations of contracts which have enured to their benefit.

The just rule of the civil law, recognized in the jurisprudence of every civilized State, that no one can be allowed to enrich himself at the expense of another, is operative both against minors and corporations. In Clark vs. City of Des Moines, VI Am. Law Reg. N. S. 159, Judge Dillon held: "Corporations are not exempt "from the ordinary principles of fair dealing that "apply between man and man, and it is the duty of "Courts not to allow the honest and just merits of a "cause to be entangled in the meshes of sophistical "reasoning and rules purely technical."

In the case at bar the contract between the city and those with whom it contracted has been fully executed by the latter. The work which they agreed to do they have done, and the city has had and now has the benefit therefrom resulting. The city cannot be permitted to enjoy the benefits of the contract and at the same time repudiate its obligations. "A corporation can-"not retain property acquired under a transaction "*ultra vires* and at the same time repudiate its obliga-"tions under the same transaction." Memphis and L. R. R. Co. vs. Dorr, U. S. C. C., S. D. N. Y., 19 Fed. Reporter, 393; Morawetz Corp., Sec. 100; Sedgwick St. and Const. Law, 73; Desmond vs. City of Jefferson, 19 Fed'l Reporter, 483.

If a corporation has entered into a contract which has been fully executed on the other part, and nothing remains but the payment by the corporation of the consideration, it will not be allowed to set up that the contract was ultra vires. Boone, Law Corporations, Sec. 101, and authorities there collated.

We might, we confidently believe, safely rest our cause on what has been said, but to make assurance doubly sure, will demonstrate our right to recover from another standpoint.

If it were conceded, merely for the sake of the argument, that the City of Shreveport was without authority to issue *negotiable* paper, judgment must, nevertheless, be rendered against the city in this cause. The contract between the city and those with whom it contracted was, that the latter should make certain improvements on the streets, wharves, etc., of the city, and receive therefor a certain amount in cash and the balance in bonds.

The work was done and accepted and the bonds were delivered to the contractors. They were and are evidence of indebtedness on the part of the city to those contractors, and the city is unquestionably bound thereon, unless it can successfully maintain some equitable defence against them. No such defence exists. The Judge *a quo* found, and it is so stated in his finding of facts, that "the bonds were given to said contractors to evidence the amount due them."

It is settled that municipal corporations have power to incur indebtedness for municipal improvements actually made, and to issue vouchers or other evidences of indebtedness, the validity and justness of which may be enquired into, if such corporation set up any equitable defence, but which must be paid, unless some equitable defence be established.

In the case Mayor vs. Ray, 19 Wall. 469, three of the Judges held that the paper sued on was commercial paper, *free from equities* in the hands of third persons. One of the Judges held that a city, unless clearly forbidden by its charter, could issue negotiable pape—

free from equities in the hands of third persons, but declared that in the case before him the plaintiff was not *bona fide* holder, and, therefore, concurred in the conclusion arrived at by the other four Judges, who held that "certificates of debt, city warrants, "orders, checks, drafts and the like, used for giving to "the public creditors evidence of the amount of their "claims against the city, *are valid instruments for that* "*purpose, and may be transferred from hand to hand,* "but they are not commercial paper, and the holder "takes them subject to all equitable defences."

In the case at bar, conceding for the sake of the argument, that defendant in error holds subject to equitable defences, if there be no such defence, he is unquestionably entitled to recover. See also Police Jury vs. Britton, 15 Wallace, 570, in which the Court (while it held that the Police Jury of Tensas had no power to issue commercial paper) unhesitatingly and fully recognized the power of municipal corporations to incur indebtedness for improvements actually made, and to issue vouchers for such indebtedness.

In the case Clark vs. City of Des Moines, VI N. S. Am. Law Reg. 159, Iowa, the plaintiff sued as holder on two hundred and twenty-two different city warrants. He was not the payee of any one of them. They were orders drawn by the Mayor on the City Treasurer, payable to some designated person or bearer. Plaintiff claimed that the warrants, being negotiable paper, he as innocent holder was not affected by any equities. The Supreme Court held, that the warrants were not commercial paper, excluding (in the hands of an innocent holder) evidence of the legality of their issue or precluding defences thereto, but that the *bona fide* assignee stood in the shoes of the payee. Considering the case from that standpoint, the Court proceeded to

give judgment against the city for the amount of certain warrants issued for building sidewalks, and other warrants which the Court found supported by a valid consideration.

The case of Hitchcock vs. Galveston, 96 U. S. 341, is conclusive in favor of the points herein made. In that case it appeared that the City of Galveston entered into a contract providing for the construction of sidewalks, and that payment therefor should be made in city bonds. The Court found that the bonds were issued without any authority whatever, but held that the contract was nevertheless operative.

The Court say: "It is not necessary to their success that plaintiffs should assert the validity of the "bonds; it is enough for them that the City Council "have power to enter into a contract for the improvement of sidewalks that such a contract was made; "that under it they proceeded to furnish material and "do work; that the city has received and now enjoys "the benefit of what they have done and furnished: "that for these things the city promised to pay, and "that after receiving the benefits of the contract the "city has broken it. It matters not that the promise "was to pay in a manner not authorized by law; if "payment cannot be made in bonds, because their "issue is *ultra vires*, it would be sanctioning rank "injustice to hold that payment need not be made "at all. *Such is not the law.*"

The Hitchcock case is precisely the case at bar. The contractors with the City of Shreveport contracted to make and did make improvements on streets, wharves, etc., for which the city agreed to pay part cash and for the balance to give its bonds, which, if invalid as bonds, are nevertheless good as evidences of the indebtedness of the city.

It may be urged on behalf of the city that while the contractors might be entitled to recover, the present holders of bonds issued to them have not the same rights. In reply to this objection we refer again to Mayor vs. Ray, 19 Wall. 469, in which this Court held that evidence of indebtedness, of whatever character, issued by a municipal corporation, are valid instruments for that purpose, *and may be transferred from hand to hand;* and to Clark vs. Des Moines, it which was held that the holder of such evidence of indebtedness stood in the shoes of the payee. It appears in the case at bar that the bonds given by the City of Shreveport to contractors for public works done by them, passed from hand to hand by mere delivery, and that such assignment was repeatedly recognized as valid by the city, which for several years paid the interest coupons to any holder. But this objection, if made, is clearly frivolous. The City of Shreveport has no interest in setting up any such defence.

In case H. B. Benjamin vs. Parish East Baton Rouge, 23 La. Annual 329, plaintiff sued upon several warrants issued for the erection of a bridge under contract, and drawn upon the Parish Treasurer by the Police Jury. The Supreme Court held that the parish must pay the warrants, whether held by original payee or in hands of other persons. That it was a matter of no concern to the parish who received the money for the warrants on which it was bound.

There can be no doubt that the payment to defendant in error of amount by him claimed will *pro tanto* extinguish the indebtedness of the city originally due to the contractors, and further than that, the city is without interest.

This point is conclusively settled in Claiborne Co. vs. Brooks, 111 U. S. 400. An action of debt brought

by Brooks against the county on its bond, payable to one Sturm or order, and by him endorsed, given to him on account of amount due him for building a courthouse. It appears from the opinion read by Mr. Justice Bradley, that the bills of exception being loose and indefinite, the real points at issue were not easily gathered, but the learned Judge states the point in controversy to be whether the defendant could set up against the assignee a defence which would have been good against Sturm, and says: "If the right of the de- "fendant to set up the defence which it had against "the bond in the hands of Sturm was not denied or "disputed, *we do not see of what importance the par- "ticular form of the instrument would have been.*"

In same case the Supreme Court, quoting Police Jury vs. Britton, reassert the doctrine, that even when municipal corporations are without authority to issue commercial paper free from equities, etc., they may incur obligations for work actually done for their benefit and give vouchers therefor.

If we concede, for the sake of argument, that the city may set up any defence which it had as against the contractors—which we can safely do, since we know the only defence is *ultra vires*—the *particular form of the instrument* becomes of no consequence. If the city owed the contractors a valid debt, evidenced by the bonds, it was and is bound to pay same, and it is immaterial to the city who receives payment.

The decisions of the Courts on the question of the power of municipal corporations to issue negotiable paper, are, it seems, occasionally grossly misunderstood and misconstrued. Such corporations, it has been held, unless expressly or by necessary or rational implication authorized so to do, cannot issue commercial paper, protected by the law merchant, excluding, when

held by innocent third persons, all equities existing between the corporation and the original payee. But it has never been held that because a municipal corporation issued evidences of indebtedness bearing the form of commercial paper, the indebtedness so evidenced was thereby extinguished; on the contrary, the liability of the corporation depends on the reality and validity of the indebtedness, no matter what may be the form of the paper given as the evidence of such indebtedness.

Suppose, for instance, a corporation, justly indebted on a contract it was authorized to enter into, say in the sum of $100 for a sidewalk, issues to its creditor two vouchers or evidences of indebtedness, each for $50, one commercial or negotiable paper in its form, and the other non-commercial in its form.

Can it be seriously contended that the corporation is liable on one of these vouchers and not on the other? In either case the corporation must pay, each voucher being the evidence of a just and legal indebtedness. The law compels all corporations to pay all obligations, no matter what their form may be, which have a just and lawful consideration.

In the case at bar, the City of Shreveport being indebted for work done on its streets, etc., under a contract which the city was authorized to make, for this work gave to the contractors bonds payable in ten years, which must be paid, not alone because they are bonds, but because they are also the evidence of a real, just and legal indebtedness.

In reply to this argument the counsel for the city in Court *a qua* contended that if the bonds were considered simply as the evidence of an indebtedness incurred for work done on the streets, there could be no judgment against the city, because no provision was

made for the payment of such indebtedness. The learned counsel cannot so contend in this Court, at least not properly, because the case is before this Court on a finding of facts made by Judge *a quo*, who found as a fact that the ordinance under which contracts were entered into and bonds issued to contractors provided for letting out contracts for public works, for paying them a part of the amount due them in cash and giving them for the balance the ten year coupon bonds of the city, and also provided for the payment of the indebtedness incurred. The only point which counsel can make in this Court is, that Judge *a quo* erred in concluding that Section 4 of Ordinance creating debt provided fully for its payment. We have already shown, we think, that ample provision was made for payment of indebtedness, as required by Section 2448 R. S. Louisiana, but in this connection we again call the attention of the Court to the legislative action taken in 1871, by which the City of Shreveport was directed to assume and pay all its indebtedness and liabilities, no matter what its form might be.

The authorities hereinbefore cited, particularly City of New Orleans vs. Clark, 95 U. S. 644, show beyond all doubt that when the Legislature so expresses its will, all indebtedness, for which an equivalent had been received, must be paid, even though when contracted no provision had been made for its payment.

ARTICLE 209, CONSTITUTION LOUISIANA 1879.

This Article, so far as it limits municipal taxation for all purposes whatever to ten mills on the dollar of valuation, is clearly prohibited by the Constitution of the United States. The Judge *a quo* found as facts, that " the defendant corporation has no property sub-

" ject to execution, and the revenues of the city, under " the limitations imposed by Article 209 of the Con- " stitution of Louisiana, adopted A. D. 1879, are not " more than sufficient for the alimony of the city. " And the defendant corporation, at the time bonds " were given to the contractors, had power to levy and " collect taxes on all property in the city without " limit."

Conceding that defendant in error is entitled to a judgment against the city, it must follow that he is entitled to a judgment declaring Article 209 null and void, otherwise he would be absolutely without any remedy. " A State law which deprives parties of all " legal remedy must necessarily impair the obligation " of the contract, within the meaning of the Constitu- " tion of the United States." Cooley's Const. Lim., 4th Edition, 534-539.

The remedy enters into and forms a material part of the obligation. A creditor by contract has a vested right to the remedies for the recovery of the debt which existed at law, when the contract was made. The validity and remedy are inseparable: both parts of the obligation; and a State Statute which enfeebles, impairs or lessens the efficiency of the remedy, or which utterly destroys the remedy, is prohibited. Memphis vs. U. S. 97 Otto, 295; Von Hoffman vs. City of Memphis, 4 Wall. 535; Sawyer vs. Parish Concordia, 12 Federal Reporter, 754, and numerous authorities there collated.

The principles just announced apply to municipal corporations. 4 Wall. 535; Wolf vs. New Orleans, 103 U. S. 358.

The ordinance by which the City of Shreveport provided for the payment of the indebtedness it incurred was irrepealable. The creditors of the city for such

indebtedness had, and have, a vested right to be paid as the ordinance provides, and to have its provisions enforced.

All this will, we presume, be conceded.

The judgment rendered in court *a qua* should be affirmed.

CITY OF SHREVEPORT, Plaintiff in Error,
versus
JOHN B. CROOKS, Defendant in Error.

The defendant in error instituted in State Court of Louisiana, two suits against the City of Shreveport, which were duly removed to the Circuit Court of the United States for the Western District of Louisiana, and there consolidated. He sues for amount due him as holder of two coupon bonds, each for $1000, issued to contractors for work done on streets and wharves, and of three bonds issued for purchase price of real estate.

PLEADINGS.

The pleadings are similar to those in the Holmes case, ante, page 1 *et seq.* so far as the bonds issued to contractors are concerned. Defendant in error alleges the city is indebted to him in an additional sum for the price of certain real estate lying within its corporate limits, purchased by the city for a city park.

STATEMENT OF FACTS.

The Judge *a quo* found the facts as found in Holmes case ante, and *in addition* found following facts:

"On the 30th May, 1870, in conformity to ordinances "of the city, previously and duly enacted, the city "purchased ten acre lot No. 7, situated within the "corporate limits of said city, for the price of $12,000, "for which the city executed and gave to the vendors

" of said property twelve ten year coupon bonds of the " city, each for $1000, bearing numbers from 1 to 12, " inclusive, which bonds were by the notary, before " whom the act of sale was passed, paraphed ne " varietur, to identify them with the act of sale. By " said act a special mortgage, waiving benefit of ap- " praisement, was stipulated on said property, in favor " of any holder of said bonds to secure the payment " of said bonds and the coupons thereto attached, and " in event of suit on said bonds, the city bound itself " to pay all costs and attorney's fees, fixed at five per " cent. on the amount sued for. The act of sale and " mortgage was signed on the part of the city by the " Mayor of the city. *Thereupon, the city took possession* " *of said ten acre lot number seven as owner, and has* " *ever since held, and now holds,* possession of same as " owner. Said property was purchased by said city " for a city park. The bonds so issued to the vendors " of said property were by them transferred by " delivery, before maturity, for value, and in due " course of business plaintiff acquired and now holds " three of said bonds."

ARGUMENT.

So far as Crooks claims a judgment for same cause of action as in Holmes case, the brief in Holmes case applies as to amount claimed for purchase price of real estate, the statement of facts found by the Judge *a quo* would seem to be conclusive.

Under authority of ordinances duly enacted, the city purchased ten acre lot, number seven, lying within its corporate limits, to be used as a park, for the price of $12,000, for which the city gave twelve ten year coupon bonds of $1000 each. There can be no doubt as to the validity of these obligations.

Under its charter the city had express power to purchase and hold any real estate within or without the city limits.

A park is a necessity in towns and cities, and the action of the corporate authorities in acquiring one was certainly wise and proper. Dillon, Municipal Corporations, 3d Edition, § 598; 15 Wend. 374.

The power to purchase real estate carried with it power to give negotiable bonds or notes. 26 Louisiana An. 709, 636; 39 Barbour, 522; 2 R. La. 244.

The city, under its purchase, got possession of ten acre lot seven, more than seventeen years ago; has ever since possessed and used it, holds it now, and proposes to hold it without paying for it. Such conduct is flagrantly dishonest. It cannot be either sanctioned or tolerated.

CITY OF SHREVEPORT, Plaintiff in Error,
versus
E. H. CARTER, Defendant in Error.

Defendant in error instituted in State Court three suits against the City of Shreveport, which were duly removed to the Circuit Court and there consolidated. He sues for amount due him as holder of 26 coupon bonds, each for $1000, issued to contractors for work done on streets and wharves, of four bonds issued for purchase price of real estate, and of two bonds issued to Mrs. M. Head, in consideration of a compromise concerning real estate made with her by the city.

THE PLEADINGS

are similar to those in Holmes case, ante, p. , so far as the 26 bonds issued to contractors are concerned. As to the four bonds issued for purchase price of real estate, and the two bonds issued to Mrs. Head in com-

promise of her rights to real estate, proper allegations are made setting forth cause of action.

STATEMENT OF FACTS.

The Judge found facts as found in Holmes case, except as to the number of bonds held by Carter, ante, p. , and in addition found facts as to purchase of real estate as found in Crooks case, ante, p. , and also with reference to bonds issued to Mrs. Head, found facts as follows:

"Mrs. M. Head was owner and in possession of cer-
" tain lots situated in what is known as the batture of
" Shreveport, *holding under a deed executed by the city.*
" On these lots Mrs. Head had buildings and improve-
" ments. This batture, including Mrs. Head's lots,
" was claimed by the Shreveport Town Company, the
" original owners of the territory known as Shreve-
" port, and it was also claimed by the city. A com-
" promise was effected January 21, 1871, by which it
" was agreed that the batture should laid be off into lots,
" with streets, alleys, etc.; that the lots should be sold
" at public auction, the proceeds to be divided equally
" between the city and said company. That Mrs.
" Head was to have certain other lots, and that she
" should retain possession of her property until the 1st
" May, 1874, as a consideration for then giving up said
" property and removing therefrom the buildings and
" improvements thereon, and also for her renunciation
" of her title to said lots. This agreement and com-
" promise was made subject to Mrs. Head's acceptance
" of its terms, and the compromise was authorized
" and ratified by an Act of the Legislature of Louisi-
" ana, approved , A. D. 1871.

"Immediately after the compromise was so author-
" ized and ratified, the city desiring to have said bat-

" ture sold at once, as a consideration for the imme-
" diate removal of Mrs. Head, and to get immediate
" possession of said lots, in pursuance of an ordinance
" legally adopted and promulgated, gave to Mrs. Head
" three of the ten year thousand dollar bonds of the
" city. Mrs. Head thereupon gave to the city im-
" mediate possession, renounced her title, and removed
" said buildings. The batture was shortly afterwards
" sold, and the city received half of the proceeds of
" the sale. Mrs. Head transferred these bonds before
" maturity by delivery for value, and plaintiff (Carter)
" acquired and holds two of them in due course of
" business."

ARGUMENT.

So far as Carter claims judgment for same cause of action as in Holmes case, the argument in that case applies. As to amount claimed for purchase price of real estate, the argument in Crooks case applies, and it applies also to the amount claimed to be due under compromise with Mrs. Head. That compromise was in effect a purchase of real estate by the city; it was fully executed on part of Mrs. Head, and resulted to the benefit of the city. The city was expressly authorized to purchase and hold real estate and also to make "any compromise, arbitration or transaction with regard thereto."

The judgments, rendered in Court *a qua* in favor of defendants in error, should be affirmed.

Respectfully submitted,

A. H. LEONARD,
LAND & LAND,
Of Counsel for Defendants in Error.

APPENDIX.

ACTS LEGISLATURE LOUISIANA, SESSION 1839, P. 200.

No. 67. An Act to incorporate the Town of Shreveport.

SECTION 1. *Be it enacted, etc.*, That all the tract or portion of land situate in the Parish of Caddo, on the southwest bank of Red River, laid off and divided into lots by the Shreveport Company, and known as the reservation made by the Caddo Indians to Larkin Edwards, consisting of 640 acres, more or less, shall continue to be designated and known as the town of Shreveport, and that all the free white inhabitants of said town are hereby declared to be a body corporate by the name and style of the Mayor and Trustees of the town of Shreveport, and by that name they and their successors shall be known in law and be capable of suing and being sued, and of defending in all courts and in all actions and matters whatever, and may have a common seal and may alter and change same at their pleasure, and by the same name shall be capable of holding and conveying any estate, real or personal, for the use of said corporation and of erecting within said town public buildings for the use of same, provided such real estate shall be within the limits of said town.

SEC. 2. There shall be for said town the following officers: a Mayor, four Trustees, a Treasurer, a Clerk, an Assessor, a Constable, who shall be collector of taxes, a Surveyor, and as many other subordinate officers for preserving the peace and well ordering of the town as the Trustees thereof shall direct, who shall hold their office during one year.

SEC. 3. Provides for the annual election of five Trustees, one of whom shall be Mayor, and a town Treasurer.

SEC. 4. That within one week after said election shall have been holden, the said Trustees shall hold a meeting at the Courthouse or some other public place in said town, and then elect by ballot and by a majority of votes one of their number to be Mayor, who shall be commissioned by the Governor as Justice of the Peace within said town, whose duty it shall be to preside at their meetings, to sign all by-laws and ordinances, to call a meeting of the Trustees whenever same shall be necessary, to sign all orders upon the Treasurer for the payment of money and all notes or other obligations binding the corporation, and to take care that all the by-laws and ordinances are faithfully executed.

SEC. 5. Provides for the election of other officers by the Trustees.

SEC. 6. That the Trustees, or a majority of them, one of whom shall be the Mayor, shall form a quorum for the transaction of business, shall meet at their own adjournment, shall have the power of raising money by direct tax, not exceeding $1000 in any one year, for the improvement and police of said town, shall have power from time to time to make such by-laws in writing not inconsistent with the Laws and Constitution of this State or of the United States, as they may deem proper in relation to public markets in said town, and relative to the streets, alleys and highways therein, draining, filling up, and keeping in order and improving the same, to nuisances in general, relating to the town watch and patrol, to regulate the assize of bread and meat within said town, and shall have the exclusive right to establish such

ferries across Red River, within the limits of said town, as they may deem expedient and to apply the revenues therefrom to the improvement of same, and to make such further regulations as may conduce to the good government and police of said town.

The remaining Sections are not relevant to case.

ACT No. 190, SESSION 1850. STATUTES LA., 1850, P. 200.

Relative to the corporation, police and government of the Town of Shreveport.

SECTION 1. *Be it enacted, etc.,* That all the tract or portion of land situated in the Parish of Caddo on the southwest bank of Red River, laid off and divided into lots by the Shreveport Company, and known as the reservation made by the Caddo Indians to Larkin Edwards, consisting of six hundred and forty acres, more or less, shall continue to be designated and known as the town of Shreveport, and that all free white inhabitants of the said town of Shreveport are hereby declared to be a body corporate by the name and style of the Mayor and Trustees of the town of Shreveport, and by that name they and their successors shall be henceforth known in law, shall be capable of suing and being sued, defending and being defended, impleading and being impleaded in all courts and places whatsoever and in any and all manner of causes and actions, shall be capable of acquiring, receiving, holding, farming, leasing or conveying any property, real or personal, of making any compromise, arbitration or transaction in regard thereto, shall have authority to adopt a common seal and the same at their pleasure to change or alter, to erect such public works and buildings for the use and advantage

of said town as they may find expedient; to give bonds and receive bonds, which shall be as effectual in law as other bonds given under the laws of this State, and also to lay and collect annually a direct tax on real estate, which tax shall be assessed on the freeholders, householders, landholders and slaveholders, and on slaves hired in the limits of the corporation, not to exceed in any one year two thousand dollars, for the improvement, comfort and well regulation of the town.

Sec. 2. Vests the municipal government in a Mayor, seven Trustees and a Treasurer, provides for their election, divides the town into wards, defines qualifications of voters, fixes time and place for holding elections, and the duration of the terms of office.

Sec. 3. Provides that after two years wards may be changed by the Mayor and Trustees.

Sec. 4. Powers and duties of Mayor. *Be it further enacted, etc.,* That the Mayor of the town shall be commissioned by the Governor of the State as a Justice of the Peace, and shall have civil and criminal jurisdiction within the corporate limits of the same as shall empower him to hear and determine on all complaints of breaches of the peace, and to punish misdemeanors, nuisances and any and all violations of the ordinances and laws during sessions and out of sessions, by fine, not to exceed fifty dollars in any one case, and by imprisonment, not to exceed forty-eight hours in any one case; he shall preside at all meetings of the Trustees, but shall not be allowed to vote only when there is a tie, shall sign all by-laws and ordinances, call meetings of the Trustees when same shall be necessary, sign all orders on the Treasurer for the payment of money, all executions, writs or demands directed to the town Constable or any of the other officers, *and shall sign all notes or other obligations binding the corporation;* he

shall order all elections by giving ten days' notice in a newspaper published in said town, in which he shall designate the place or places where the election or elections shall be held, shall appoint commissioners in each ward to hold said elections, and shall take care that all the by-laws and ordinances are faithfully executed.

SEC. 5. Provides for salary and fee of Mayor.

SECS. 6 and 7. How election shall be conducted, etc.

SEC. 8. *Be it further enacted, etc.,* That the Trustees or a majority of them, one of whom shall be the Mayor, shall form a quorum for the transacting of business, shall meet at their own adjournments, *shall have power from time to time to enact and provide for the promulgation of such by-laws and ordinances not inconsistent with the laws of the State and of the United States, as they may deem proper in relation to the public markets of said town, to the landings, streets, alleys and highways therein, and to the opening, widening, draining, filling up, keeping in order and improving the same,* to nuisances in general, to the town patrol, to the police of slaves and public houses and to the assize of bread and meat, and they shall have power generally to make all such other rules and regulations as may relate to the good ordering, government, improvement and police of the town.

SEC. 11. *Be further enacted, etc.,* That the Board of Trustees shall have power to levy and collect for the use of said town, *in such apportionment as may appear to them just and equitable, a tax* on the following description of persons and property within said town, to-wit., special taxes, licenses on stores, wholesale and retail, retailers of spirituous liquors, grog shops, restaurants, beer and wine shops, exhibitions, taverns, boarding houses, hawkers and peddlers, auctioneers, livery

stables, carriages of pleasure, wagons, carts and drays for hire, billiard tables, nine or ten pin alleys, ball rooms, theatres and shows of all and every description within the limits of said town, and they shall before exercising their business or trade take out a license authorizing same, after paying the Treasurer the amount of tax upon such trade or business by the Board of Trustees imposed. They shall further have power to lay and collect taxes upon all vessels, steamboats, keel boats, flatboats or any other craft moving within the limits of said town, or lying at the wharves or landings of said town, and all the wharves, streets, alleys and levees shall remain in the exclusive control of said Board. They shall further have power to tax all property, traders, all professions and all occupations now taxed by the State; provided that the tax levied on property, traders, professions and occupations sha l not exceed the State tax.

The remaining Sections are not relevant, except the last, Section 25. That this Act shall be in force from and after the first Monday in May, 1850, and that all laws contrary to this Act shall be repealed from and after the 1st day of May, 1850.

Act No. 232, Session 1853. Statutes 1853, p. 198.

To amend the 1st Section of an Act entitled an Act relative to the corporation, police and government of the town of Shreveport, approved 18th March, 1850:

Section 1. *Be it enacted, etc.*, That section first of an Act entitled an Act relative to the corporation, police and government of the town of Shreveport, approved 18th March, 1850, be and is hereby amended and re-enacted so as to read as follows: That all the

tract, or parcel or portion of land, situate in the Parish of Caddo, on the southwest bank of Red River, laid off and divided into lots by the Shreveport Company, and known as the reservation made by the Caddo Indians to Larkin Edwards, consisting of six hundred and forty acres, more or less, shall continue to be designated and known as the town of Shreveport, and that all free white inhabitants of the said town of Shreveport are hereby declared to be a body corporate by the name and style of the Mayor and Trustees of the town of Shreveport, and by that name they and their successors shall be henceforth known in law; shall be capable of suing and being sued, defending and being defended, impleading and impleaded, in all courts and places whatsoever, and in any and all manner of causes and actions; shall be capable of acquiring, receiving, holding, farming, leasing or conveying any property, real or personal, of making any compromise, arbitration or transaction in regard thereto; shall have authority to adopt a common seal, and the same at their pleasure to change and alter, to erect such public works and buildings for the use and advantage of said town as they may find expedient; to give bonds and receive bonds, which shall be as effectual in law as other bonds given under the laws of this State; and also *to tax and collect annually* a direct tax on real estate, which tax shall be assessed on the freeholders, householders, landholders and slaveholders, and on slaves hired in the limits of the corporation for the improvement, comfort and well regulating of said town.

Sec. 2. *Be it enacted, etc.*, That this Act shall take effect from and after its passage.

It will be observed, that by Act of 1850, the power to tax was limited to $2000 for any one year. The amend-

ment passed in 1853 consisted in omitting this limitation, leaving the Mayor and Trustees vested with power to levy and collect taxes to an unlimited amount.

ACT 156, SESSION 1859. STATUTES 1859, P. 120.

SEC. 4 provides, that Mayor and Trustees are authorized to acquire and hold property outside the corporate limits of said town, to be used as hospitals, pest-houses and cemeteries, and to make and enforce ordinances for the government of same; to establish quarantine, etc.

SEC. 5. *Be it enacted, etc.*, That said Mayor and Trustees shall have power to have any of the streets of said town paved or macadamized, and the owners of property fronting on the streets so improved shall pay one-third of the cost of such improvement, etc.

ACT NO. 146, SESSION OF 1866. STATUTES 1866, P. 276.

SECTION 1. *Be it enacted, etc.*, That the Mayor and Trustees of the town of Shreveport, in the Parish of Caddo, be and are hereby authorized to purchase and to hold in fee simple, real estate outside the corporation for the use and benefit of the town.

NEW CHARTER GRANTED 1871. ACTS 1871, P. 218.

No. 98. An Act to incorporate the City of Shreveport.

SECTION 1. *Be it enacted, etc.*, That all of that district of country contained within the following limits, to-wit: from where the half mile line running north through section thirty-five would strike if continued Cross Bayou on the north or west bank, thence south on said line to the centre of section two, thence east to the half mile corner of section six, township seven-

teen, range thirteen west, thence north to the northwest corner of said section six, thence east on the township line to the east bank of Bayou Pierre, thence along said bayou across Red River, thence up east bank of Red River to a point opposite the north bank of Cross Bayou, thence across Red River to the northwest bank of Cross Bayou, thence up the north bank of said bayou to the point of starting, shall be included within the corporate limits of the City of Shreveport.

SEC. 2. That the inhabitants of the City of Shreveport, laid out as above, are hereby constituted and declared to be a corporation and body politic, in fact and law, by the name and style of the City of Shreveport.

SEC. 21. § 3. *Be it further enacted*, That all the right, title and interest of the City of Shreveport to all lands, tenements, hereditaments, bridges, ferries, streets, roads, wharves, markets, stalls, levees and landing places, buildings, and other property of whatever description and wherever situated, and with all goods, chattels, moneys, effects, debts, dues, demands, bonds, obligations, judgments, liens, actions and rights of action, books, accounts and vouchers, be and they are hereby invested in the City of Shreveport, *as incorporated by this act;* provided that all the estates, income, funds or property of any description now held in trust by said City of Shreveport, or which shall have been specially pledged or affected by the payment of any debt, shall be held by the City of Shreveport *under this act*, upon and for the same uses, trusts, limits, limitations, charities and conditions as the same are now held, *and all other indebtedness or liabilities of the City of Shreveport, whether*

in the form of bonds, notes, interest coupons, cash, warrants or any other species of obligations whatever, shall be assumed and paid by the City of Shreveport, as constituted and incorporated by this act, and the said city is declared liable therefor; and upon the organization of the Council of the City of Shreveport, as constituted and incorporated by this Act, all the powers, rights, privileges and immunities possessed and enjoyed by the Mayor and Trustees of the City of Shreveport, as at present constituted, shall cease and terminate and be vested in the City of Shreveport, as established by this Act.